(16,243 & 16,265.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 151.

AMBROSE P. S. STUART, APPELLANT,

vs.

KENT K. HAYDEN, RECEIVER OF THE CAPITAL NATIONAL BANK OF LINCOLN, NEBRASKA; AUGUST T. GRUETTER AND CHARLES F. JOERS.

FILED MARCH 30, 1896.

No. 160.

AUGUST T. GRUETTER AND CHARLES F. JOERS, APPELLANTS,

vs.

AMBROSE P. S. STUART AND KENT K. HAYDEN, RECEIVER OF THE CAPITAL NATIONAL BANK OF LINCOLN, NEBRASKA.

FILED APRIL 27, 1896.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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1 Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the December term, 1895, of said court, begun and held at the United States court-house, in the city of St. Louis, Missouri, on the first Monday in December, to wit, the second day of December, A. D. 1895, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn, and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Be it remembered that heretofore, to wit, on the twenty-sixth day of June, A. D. 1895, a transcript of record, in pursuance of an appeal allowed by the circuit court of the United States for the district of Nebraska, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit in the case of Ambrose P. S. Stuart, appellant, *vs.* Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, *et al.*, appellees; which said transcript of record is in the words and figures following, to wit:

2 Pleas before the Honorable John A. Riner, judge of the district court of the United States for the district of Wyoming, sitting in the circuit court of the United States for said district of Nebraska, within the eighth judicial circuit, at the term of January, A. D. 1895.

Be it remembered that on the 11th day of August, 1893, a bill of complaint was filed in the clerk's office of said circuit court; which said bill of complaint is in the words and figures following, to wit:

Bill.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Plaintiff,
vs.
AMBROSE P. S. STUART, Defendant.

To the judges of the circuit court of the United States for the district of Nebraska:

Kent K. Hayden, receiver of the Capital National Bank of Lincoln, brings this his bill against Ambrose P. S. Stuart, and thereupon your orator complains and says that the said Capital National Bank of Lincoln is a banking association organized and lately doing business under and by virtue of the laws of the United States, and located within the State and district of Nebraska; that on or about the 23rd day of January, 1893, the said Capital National Bank of Lincoln failed, became and was insolvent, and the Comptroller of the Currency of the United States became and was satisfied of the insolvency of said national banking association; that thereupon,

on or about the 6th day of February, 1893, after due examination of the affairs of the said association, the said comptroller appointed one John D. Macfarland receiver of said Capital National Bank of Lincoln; that said John D. Macfarland qualified as such receiver, entered upon the duties of said office, took possession of said bank, its books, records, and assets, and proceeded to close up the said association; that on or about the 4th day of May of the year last aforesaid, the said John D. Macfarland resigned his said office of receiver of said bank, which said resignation was duly accepted by the said comptroller; that thereupon, and afterwards, the plaintiff was duly appointed receiver of the said Capital National
2½ Bank of Lincoln, by the said Comptroller of the Currency to succeed the said John D. Macfarland; that on or about the 31st day of May, 1893, the plaintiff having been duly appointed as aforesaid, duly qualified as such receiver of said Capital National Bank of Lincoln, entered upon the duties of said office, took possession of said bank, its books, records, and assets, proceeded to close up said association, and is now engaged in winding up the affairs of said bank.

2nd. Your orator further alleges that on or about the 10th day of June, 1893, the Comptroller of the Currency of the United States at the city of Washington in the District of Columbia, made, issued, declared, signed, sealed with the seal of his office, and published his order and proclamation of that date in and by which he declared that: Whereas, upon a proper accounting by the receiver theretofore appointed to collect the assets of the Capital National Bank of Lincoln, Nebraska, and upon a valuation of the uncollected assets remaining in his hands, it did appear to the satisfaction of said comptroller that in order to pay the debts of said association it is necessary to enforce the individual liability of the stockholders therefor to the extent thereinafter mentioned as prescribed by sections 5151 and 5234 of the Revised Statutes of the United States; that therefore by virtue of the authority in him vested by law, he did thereby make assessment and requisition upon the shareholders of the said Capital National Bank of Lincoln for three hundred thousand dollars, to be paid by them ratably on or before the 10th day of July, 1893, and he did thereby make demand upon each and every one of them, the said shareholders, for one hundred dollars upon each and every share of the capital stock of said association held or owned by them respectively at the time of its failure, and thereby direct your orator by the name and designation of K. K. Hayden, the receiver therefor appointed, to make all necessary proceedings by suit or otherwise, to enforce, to that extent, the individual liability of the said shareholders, of all of which the said Ambrose P. S. Stuart had notice.

3rd. Your orator further alleges and represents to your honors that on the 24th day of December, 1892, for a long time previous thereto, and thereafter down to the 3rd day of January, 1893, the said defendant was the owner and holder of and had standing in his name, one hundred and fifty shares of the capital stock of the said Capital National bank standing in his name upon the books of

said association, and that upon and for a long time previous to the said last-mentioned day, the said defendant was a director of the said Capital National Bank of Lincoln; that on said 24th day of December, 1892, for a long time prior thereto and up
3 to the said 3rd day of January, 1893, the said Capital National Bank of Lincoln was in a failing condition, and was in fact insolvent, which was known to said defendant personally as well as officially in his capacity as such director.

Your orator represents to your honors that said defendant being fully advised of and knowing the failing condition and insolvency of said bank, and in the expectation and anticipation of the early and near approaching failure of said bank, and the necessary enforcement of his liability as a shareholder of said bank, and to defraud the said bank, its depositors and creditors out of the security afforded by the law upon the shareholders of the national banks, and to render it impossible in case of the failure of the said bank which the said defendant believed and had reason to believe was im-inent and could not be long delayed, to place it out of the power of the Comptroller of the Currency to enforce the contingent liability of him, the said defendant, to contribute not to exceed one hundred cents on the dollar of the par value of the shares of stock owned and held by him as hereinbefore stated, in case of the failure of said bank and its inability to pay its depositors and other creditors out of the ordinary resources, and without resorting to an assessment upon its capital stock in the hands of its shareholders and for the purpose of avoiding such liability and cheating, wronging, and defrauding the said bank, its depositors and creditors, the Comptroller of the Currency, and the receiver of said bank of their lawful rights and remedies in the premises, did on or about the 3rd day of January, 1893, sell and cause to be transferred on the books of said bank, by proceeding regular in form, but which your orator, upon information and belief, alleges were and are colorable only, and not made in good faith, the one hundred and fifty shares of the capital stock of said Capital National Bank of Lincoln so owned and held by him as aforesaid to Gruetter and Joers whom your orator has been informed and believes and so charges upon information and belief, are and were at the date last aforesaid, pecuniarily irresponsible persons of or from whom the amount of such assessment of one hundred dollars upon each share of the said capital stock so owned and held by the said defendant, could not be made by legal process or otherwise. So that your orator by reason of the pretended sale and transfer of the said shares of stock by and from the said defendant to the said Gruetter and Joers and the insolvency of the said Gruetter and Joers and their pecuniary inability to respond in damages as hereinbefore set forth and stated, your orator is deprived of his remedy at law for the collection of so much of the assessment of three hundred thousand dollars made upon the capital stock
4 of said Capital National bank as is applicable to the one hundred and fifty shares thereof, owned and otherwise held by the said defendant. All of which actions and doings of the said defendant are contrary to equity and good conscience, and tend to

the manifest wrong, injury, and oppression of your orator in the premises. In tender consideration whereof, and forasmuch as your orator is entirely remediless by the strict rules of the common law, and can only have relief in a court of equity where matters of this nature are properly cognizable to the end, therefore, that the said Ambrose P. S. Stewart, defendant, may full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as though the same were her-in-after repeated, and he thereunto distinctly interrogated, but the answer in or under oath of the said defendant is hereby waived; and the plaintiff prays that upon consideration thereof, your orators may find that the said defendant is the true and lawful owner of the one hundred and fifty shares of the capital stock of the Capital National bank hereinbefore mentioned, and may adjudge and decree that he pay to your orator the assessment thereon made by the (Comptroller) of the Currency as hereinbefore stated, to the sum and amount of fifteen thousand dollars, together with lawful interest on said sum from the 10th day of July, 1893, together with the costs of this action and a reasonable solicitors' fee for its conduct and prosecution; and that your orator may have such other and further relief in the premises as may be agreeable to equity and good conscience.

May it please your honors to grant unto your orators a writ of subpœna issuing out of this honorable court in equity to be directed to the said Ambrose P. S. Stuart, thereby commanding him under a certain penalty therein to be specified, to be and appear personally before your honors on a certain day then and there to answer all and singular the premises and to stand to and perform and abide such order and decree therein as to your honors shall seem meet, and the plaintiff shall ever pray.

COBB & HARVEY,
Solicitors for the Plaintiff.
G. M. LAMBERTSON,
Of Counsel for the Plaintiff.

Upon the back of said bill appear indorsements in the words and figures following, to wit: No. 69 "Q." Kent K. Hayden, receiver of the Capital National Bank of Lincoln, plaintiff, *vs.* Ambrose P. S. Stuart, defendant. Bill. Filed Aug. 11, 1893. Elmer D. Frank, clerk. Cobb & Harvey, attorneys for plaintiff.

5 Thereupon afterwards to wit: on the 11th day of August, 1893, a subpœna in chancery was duly issued in said case, and returned and filed August 16, 1893; which said subpœna is in the words and figures following, to wit:

UNITED STATES OF AMERICA, }
District of Nebraska, } *ss:*

The President of the United States of America to Ambrose P. S. Stewart, Greeting:

We command you to appear before the judges of the circuit court of the United States, for the district of Nebraska, at Omaha, on the

first Monday in September next, it being the fourth day of September, A. D. 1893, to answer the bill of complaint of Kent K. Hayden, receiver of the Capital National Bank of Lincoln, this day filed in the office of the clerk of said court, and then and there to receive and abide by such order and decree as shall then or thereafter be made, upon pain of the said bill being taken as confessed against you and decree pronounced accordingly.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Omaha, this 11th day of August, A. D. 1893, and of the Independence the 118th year.

[SEAL.] ELMER D. FRANK, *Clerk.*

Memorandum.

The above-named defendant is notified that unless he enter his appearance in the clerk's office of said court, at Omaha, aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against him as confessed and a decree entered thereon accordingly.

ELMER D. FRANK, *Clerk.*

Attached to said subpœna is the return of the marshal in the words and figures following, to wit:

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 11th day of August, 1893, I received this subpœna and on the 12th day of August, 1893, I served the same upon the within-named Ambrose P. S. Stuart in Lancaster county, State and district of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon.

FRANK E. WHITE,
United States Marshal for the District of Nebraska,
By M. E. HUBBARD,
Deputy United States Marshal.

6 Upon the back of said subpœna appear indorsements in the words and figures following, to wit: No. 69 "Q." Circuit court of the United States, for the district of Nebraska, in chancery. Kent K. Hayden, receiver of the Capital National Bank of Lincoln, *vs.* Ambrose P. S. Stuart. Subpœna in chancery. Returnable to rule day first Monday in September, 1893. Elmer D. Frank, clerk. Filed Aug. 16, 1893. Elmer D. Frank, clerk. Cobb & Harvey, comp't's sol'rs. Marshal's costs. Service, $2.00. Mileage 3.48. Total $5.48.

Thereupon and afterwards, to wit: on the 27th day of September, 1893, a demurrer of Ambrose P. S. Stuart was filed in said case; which said demurrer is in the words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska, Plaintiff,
vs.
AMBROSE P. S. STUART, Defendant.

The demurrer of Ambrose P. S. Stuart (in the bill by mistake called Ambrose P. S. Stewart) to the bill of complaint of Kent K. Hayden, receiver, the above-named plaintiff.

This defendant, by protestation not confessing all or any of the matters and things in the plaintiff's bill of complaint contained, to be true in such manner and form, as the same *is* therein set forth and alleged, doth demur to the said bill, and for the cause of demurrer showeth that the plaintiff hath not in and by his said bill made or stated such a case as entitles him in a court of equity to any relief against this defendant, as to the matters contained in such bill, or any of such matters, and that plaintiff has a plain and adequate remedy at law.

And for further cause of demurrer, this defendant shows that it appears by the said plaintiff's said bill that Gruetter & Joers (the parties therein named as the alleged fraudulent transferees of the said shares of bank stock) are resident within the jurisdiction of this court, and are necessary parties to the said bill, and the said Gruetter & Joers are not named as parties thereto.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendant doth demur thereto, and humbly demands the judgment of this court whether he shall be compelled to make any other and further answer to the said bill, and
7 hence asks to be dismissed of his costs and charges in this behalf most wrongfully sustained.

C. C. FLANSBURG,
Solicitor for Defendant.

I certify that, in my opinion, the above demurrer is well founded in point of law.

JAMES McNENY, *Of Counsel.*

STATE OF NEBRASKA, } ss:
Lancaster County, }

Ambrose P. S. Stuart, being first duly sworn, according to law, on his oath deposes and says that he is the defendant in the above-entitled case and that the demurrer therein is not interposed for delay.

AMBROSE P. S. STUART.

Subscribed in my presence, and sworn to before me, by Ambrose P. S. Stuart, this 27th day of September, 1893.

[SEAL.] VERNE L. LAFFERTY,
Notary Public in and for Lancaster County, Nebraska.

Upon the back of said demurrer appear indorsements in the words and figures following, to wit: No. 69 "Q." In the circuit court of the United States for the district of Nebraska. Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, plaintiff, *v.* Ambrose P. S. Stuart, def't. Demurrer. Filed Sept. 27, 1893. Elmer D. Frank, clerk. C. C. Flansburg, Lincoln, Neb., solicitor for def't.

Thereupon afterwards, at the November, 1893, term of said *term of said* court, on the 15th day of December, 1893, the following proceedings were had and done in said case, as appears of record on folio 135, Journal "S" of said court, to wit:

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Plaintiff,
vs.
AMBROSE P. S. STUART.

On motion of the complainant, by Cobb & Harvey, his solicitors, leave is hereby granted by the court to amend the bill of complaint herein by making new parties and otherwise in ten days from this date.

Thereupon afterwards at the January, 1894, term of said court, on the 9th day of January, 1894, the following proceedings
8 were had and done in said case, as appears of record on folio 263, Journal "S" of said court, to wit:

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln,
vs.
AMBROSE P. S. STUART.
} 69, "Q."

On motion of the complainant, by Cobb & Harvey, his solicitors, leave is hereby granted by the court to amend the bill of complaint herein by making new parties in five days from this date. Defendants *are* ruled to answer in fifteen days and complainant to reply in twenty days from this date. Cause continued.

Thereupon afterwards, at the January, 1894, term of said court, on the 9th day of February, 1894, the following proceedings were had and done in said case, as appears of record on folio 378, Journal "S" of said court, to wit:

KENT K. HAYDEN, Receiver,
vs.
AMBROSE P. S. STUART.
} 69, "Q."

This cause having been heard on the demurrer to the bill of complaint, the court does, after careful consideration thereof, now on this day sustain the same, and complainant is granted leave to amend the bill of complaint in ten days by making new parties de-

fendant and otherwise if desired. Defendant is ruled to answer in twenty days from date and complainant to reply in twenty-five days. Cause continued.

Thereupon afterwards, to wit: on the 21st day of Feb., 1894, an amended bill was filed in said case; which said amended bill is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska, Complainant,
vs.
AMBROSE P. S. STUART, AUGUSTUS T. GRUETTER and CHARLES F. JOERS, Copartners as Gruetter and Joers, Respondents.

To the judges of the circuit court for the district of Nebraska:

Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, brings this his amended bill against Ambrose
9 P. S. Stuart, Augustus T. Gruetter and Charles F. Joers, copartners as Gruetter & Joers, and thereupon your orator says:

That the said Capital National Bank of Lincoln, Nebraska, is a banking association organized and lately doing business under and by virtue of the laws of the United States, located within the State and district of Nebraska.

That the said Augustus T. Gruetter and Charles F. Joers are copartners in trade, engaged in the wholesale and retail business of buying and selling furniture at the city of Lincoln, Nebraska.

That said Ambrose P. S. Stuart is a resident of the city of Lincoln, and a resident and citizen of the State of Nebraska.

That on or about the 23rd day of January, 1893, the said Capital National Bank of Lincoln failed, and became and was insolvent and the Comptroller of the Currency of the United States became and was satisfied of the insolvency of said Capital National Banking Association; that thereupon, on or about the 6th day of February, 1893, after due examination of the affairs of the said association, the said comptroller appointed one John D. Macfarland receiver of said Capital National Bank of Lincoln; that said John D. Macfarland qualified as such receiver, entered upon the duties of said office, took possession of said bank, its books, records and assets, and proceeded to close up the said association. That on or about the 4th day of May, *to* the year last aforesaid the said John D. Macfarland resigned his said office of receiver of said bank, which said resignation was duly accepted by the said comptroller; that thereupon, and afterwards, the plaintiff was duly appointed receiver of the said Capital National Bank of Lincoln, by the said Comptroller of the Currency, to succeed the said John D. Macfarland; that on or about the 31st day of May, 1893, the plaintiff, having been duly appointed as aforesaid, duly qualified as such receiver of said Capital National Bank of Lincoln, entered upon the duties of said office, took possession of said bank, its books, records and assets, and proceeded to close up

said association, and is now engaged in winding up the affairs of said bank.

2. Your orator further alleges that on or about the 10th day of June, 1893, the Comptroller of the Currency of the United States at the city of Washington in the District of Columbia, made, issued, declared, signed, sealed with the seal of his office and published his order and proclamation of that date in and by which he declared that, whereas, upon a proper accounting by the receiver theretofore appointed to collect the assets of the Capital National Bank of Lincoln, and upon a valuation of the uncollected assets remaining in his hands, it did appear to the satisfaction of said comptroller that in order to pay the debts of said association it is necessary to enforce the individual liability of the stockholders therefor to the extent thereinafter mentioned as prescribed by sections 5151 and 5234 of the Revised Statutes of the United States; that therefore by virtue of the authority in him vested by law, he did thereby make assessment and requisition upon the shareholders of the said Capital National Bank of Lincoln for three hundred thousand dollars, to be paid by them ratably on or before the 10th day of July, 1893; and he did thereby make demand upon each and every share of the capital stock of said association held or owned by them respectively at the time of its failure, and thereby direct your orator by the name and designation of K. K. Hayden, the receiver theretofore appointed, to make all necessary proceedings by suit or otherwise to enforce, to that extent, the individual liability of the said shareholders, of all of which the said Ambrose P. S. Stuart and other respondents had notice.

3. Your orator further alleges and represents to your honors that on the 24th day of December, 1892, for a long time previous thereto, and thereafter down to the 3rd day of January, 1893, the said respondent Ambrose P. Stuart was the owner of and had standing in his name, one hundred and fifty shares of the capital stock of the said Capital National Bank of Lincoln, upon the books of said association, and that upon and for a long time previous to the said last-mentioned day the said defendant Ambrose P. S. Stuart was a director of the said Capital National Bank of Lincoln.

That on said 24th day of December, 1892, for a long time prior thereto and up to the said 3rd day of January, 1893, the said Capital National Bank of Lincoln was in a failing condition, and was in fact insolvent, which was known to said Ambrose P. S. Stuart personally, as well as officially in his capacity as such director.

Your orator further represents to your honors that said Ambrose P. S. Stuart respondent herein, being fully advised of and knowing the failing condition and insolvency of the said bank, and in the expectation and anticipation of the early and near approaching failure of the said bank, and the necessary enforcement of his liability as a shareholder, and to defraud the said bank, its depositors and creditors out of the security afforded by the law upon the shareholders of national banks, and to render it impossible in the case of

the failure of said bank which the said respondent believed
11 and had reason to believe was imminent and could not be long delayed, to place it out of the power of the Comptroller of the Currency to enforce the contingent liability of him the said respondent Ambrose P. S. Stuart to contribute not to exceed one hundred cents on the dollar of the par value of the shares of stock owned and held by him as hereinbefore stated, in case of the failure of said bank and its inability to pay its depositors and other creditors out of the ordinary resources, and without resorting to an assessment upon its capital stock in the hands of its shareholders, and for the purpose of avoiding such liability, and cheating, wronging and defrauding the said bank, its depositors and creditors, the Comptroller of the Currency and the receiver of the said bank, of their lawful rights and remedies in the premises, did on or about the 3rd day of January, 1893, sell and cause to be transferred on the books of the said bank, by proceeding- regular in form but which your orator upon information and belief avers were and are colorable only, and not made in good faith, the one hundred and fifty shares of the capital stock of the Capital National Bank of Lincoln, Nebraska, so owned and held by him as aforesaid, to Gruetter & Joers, whom your orator has been informed and believes and so charges upon information and belief, are and were at the date last aforesaid, pecuniarily irresponsible persons of or from whom the amount of such assessment of one hundred dollars upon each share of the said capital stock so owned and held by the said respondent Ambrose P. S. Stuart, could not be made by legal process or otherwise. So that your orator by reason of the pretended sale and transfer of the said shares of stock by and from the said respondent Ambrose P. S. Stuart, to the said respondents Gruetter and Joers and the insolvency of the said Gruetter and Joers, and their pecuniary inability to respond in damages as hereinbefore stated and set forth, your orator is deprived of his remedy at law for the collection of so much of the assessment of three hundred thousand dollars made upon the capital stock of the said Capital National bank as is applicable to the one hundred and fifty shares thereof owned and otherwise held by the said respondent Ambrose P. S. Stuart; all of which actions and doings of the said respondent are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator in the premises.

In tender consideration whereof, and forasmuch as your orator is entirely remediless by the strict rules of the common law, and can only have relief in a court of equity where matters of this kind are properly cognizable, to the end therefore, that the said
12 Ambrose P. S. Stuart and said Gruetter & Joers, respondents herein, may full, true, direct, and full answer make to all and singular the matters hereinbefore stated and charged as fully and particularly as though the same were hereinafter repeated, and they thereunto distinctly interrogated, but the answer in or under oath of the said respondents is hereby waived.

And the complainant prays that upon consideration thereof, your honors find that the said respondent Ambrose P. S. Stuart is the

true and lawful owner of the said one hundred and fifty shares of the capital stock of the Capital National bank hereinbefore mentioned, and that the transfer of the said shares of stock by the said Ambrose P. S. Stuart, to the said Gruetter & Joers may be set aside, and may adjudge and decree that he pay to your orator the assessment thereon made by the Comptroller of the Currency as hereinbefore stated, to the sum and amount of fifteen thousand dollars, together with lawful interest on said sum from the 10th day of July, 1893, together with the costs of this action and a reasonable solicitors' fee for its conduct and prosecution; and that your orator may have such other and further relief in the premises as may be agreeable to equity and good conscience.

May it please your honors to grant unto your orator a writ of subpœna issuing out of this honorable court in equity, to be directed to the said Ambrose P. S. Stuart, and the said Augustus T. Gruetter and Charles F. Joers copartners as Gruetter & Joers, thereby commanding them under a certain penalty therein to be specified, to be and appear personally before your honors on a certain day then and there to answer all and singular the premises, and to stand to and perform and abide such order and decree therein as to your honors shall seem meet, and your orator will ever pray.

COBB & HARVEY,
Solicitors for Complainant.
G. M. LAMBERTSON, *Of Counsel.*

Upon the back of said amended bill appear indorsements in the words and figures following, to wit:

No. 69 "Q." Kent K. Hayden, receiver, *vs.* A. P. S. Stuart *et al.* Amended bill. Filed Feb. 21, 1894, Elmer D. Frank, clerk. Cobb & Harvey, & G. M. Lambertson, solicitors for complainant.

Thereupon afterwards, to wit, on the 24th day of February,
13 1894, an answer of Gruetter & Joers to amended bill was filed in said case; which said answer is in the words and figures following, to wit:

Answer of Gruetter & Joers to Amended Bill.

In the Circuit Court of the United States for the District of Nebraska.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska, Complainant,
vs.
AMBROSE P. S. STUART, AUGUST T. GRUETTER and CHARLES F. JOERS, Copartners as Gruetter & Joers, Respondents.

The joint and several answers of August T. Gruetter and Charles F. Joers to the amended bill of complaint of the complainant, Kent K. Hayden.

These defendants respectively, now and at all times hereafter (expecting) and reserving unto themselves all and all manner of

benefit, advantage or exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in said bill of complaint contained, for answer thereunto, or unto so much *as* to such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, answering say:

These defendants admit that the Capital National Bank of Lincoln, Nebraska, mentioned in said bill of complaint, is a banking association organized and lately doing business under and by virtue of the laws of the United States, and located within the State and district of Nebraska.

These defendants deny that they are copartners in trade and engaged in the wholesale and retail business of buying and selling furniture at the city of Lincoln, Nebraska.

These defendants admit that the said Ambrose P. S. Stuart is a resident of the city of Lincoln, and a resident and citizen of the State of Nebraska, and admit that on or about the 23rd day of January, 1893, the said Capital National Bank of Lincoln failed and became and was insolvent, and the Comptroller of the Currency of the United States became and was satisfied of the insolvency of said Capital National Banking Association, and that thereupon, on or about the 6th day of February, 1893, after due examination of the affairs of said association, the said comptroller appointed one John D. Mcfarland, receiver of said association, who qualified as such and entered upon the duties of said office and took possession of
14 said bank, its books, records and assets; and that afterwards the said Mcfarland resigned his said office as such receiver, and that thereafter on or about the 31st day of May, 1893, the complainant having been duly appointed and qualified as receiver of said association as a successor of the said Mcfarland, took possession of said bank, its books, records, and assets, and is now engaged in winding up its affairs.

And these defendants further admit that afterwards and on or about the 10th day of June, 1893, the Comptroller of the Currency of the United States, duly made, issued and declared, signed and sealed his certain order and proclamation of that date, in which he decreed and determined as set forth in said bill of complaint, that it was and is necessary to enforce the individual liability of the stockholders of said bank, and made a requisition upon such stockholders for the sum of three hundred thousand dollars ($300,000), to be paid ratably on or before the 10th day of July, 1893, and directed the complainant to take all necessary proceedings by suit or otherwise to enforce to that extent the individual liability of said shareholders, of all of which the said Stuart had notice.

These defendants further admit that on the 24th day of December, 1892, and for a long time prior thereto and thereafter, down to the 3rd day of January, 1893, the said Stuart was the owner of and had standing in his name upon the books of said bank, one hundred fifty (150) shares of the capital stock thereof, and that for a long time prior to the said last-named date said defendant Stuart was director of said bank, and that on said 24th day of December,

and for a long time prior thereto, and up to the said 3rd day of January, 1893, the said Capital National Bank of Lincoln, was in a failing condition and was in fact insolvent; which was known to the said Stuart personally, as well as officially in his said capacity as such director.

And these defendants further admit and allege and aver the fact to be, that the said Ambrose P. S. Stuart, one of the respondents herein, being fully advised of and knowing the failing condition and insolvency of the said bank, and in the expectation and anticipation of the early and near approaching failure of the said bank, and the necessary enforcement of his liability as a shareholder therein, with the intent and purpose as well to defraud the said bank, its depositors and creditors of the security afforded by the law upon the shareholders of national banks, and to render it impossible in case of the failure of said bank, which the said defendant believed and had reason to believe was imminent, and not long to be delayed, to place it out of the power of the Comptroller of the Currency to enforce his liability as such shareholder, and with the intent and for the purpose as well of avoiding such liability — cheat, wrong and defraud the said bank, its depositors and creditors of their lawful rights, and remedies in the premises, as also to cheat, wrong, and defraud these defendants and to subject these defendants to liability as shareholders in said bank, to the creditors and depositors thereof, on or about the 23rd day of December, 1892, wrongly, falsely, fraudulently and unlawfully for the purpose and intent aforesaid, represented, stated and warranted to these defendants, that he, the said Stuart well knew the condition of the said bank, and the value of the said shares of stock, and that said bank was in a safe and solvent condition, and abundantly able to pay its indebtedness, and that said stock was fairly and reasonably worth the sum of at least $1.25 per share, or $18,000 in all, and proposed and urged that these defendants should accept said stock at said sum and valuation of $18,000 upon, and as a part of the purchase price of certain real estate, to wit: of lot- Nos. five (5), and six (6), in block numbered thirty-four (34) according to the original plat of the town, now city of Lincoln, Nebraska, which these defendants were then about to sell, and did sell to the said defendant Stuart, for the agreed price of $37,500, subject to a certain mortgage indebtedness and lien thereon; which these defendants say the said premises were fairly and reasonably worth.

And these defendants further say that being wholly ignorant in the premises and relying wholly and implicitly upon the said statements and representations of the said defendant, and believing them to be true, these defendants did on or about said last-named day, sell and convey said property to said Stuart for said sum, subject to said encumbrance, and did receive from said defendant an assignment of said shares of stock, to wit, 150 shares of the nominal of the face amount of $100 each, and for the said sum of $18,000 as a party of the said purchase price of said property; which said assignment was made to these defendants by the name of Gruetter & Joers, yet these defendants aver that at, and for a long time prior to said 23rd

day of December, 1892, and at and before the time of the making of the representations by the said defendant, and at and before the date of the sale and conveyance of said property by these defendants to said Stuart, and the assignment by him to them of the shares of said stock, the said Stuart well knew that said bank was
16 wholly insolvent and wholly unable to pay its debts and that said shares of its capital stock were not only wholly valueless but that if these defendants should receive and accept an assignment thereof from the said Stuart, they, by so doing, would subject themselves to liability of an assessment thereon, by the Comptroller of the Currency for the benefit of its creditors and depositors.

And these defendants further aver that not until long after the transfer and assignment of said shares of stock from the said Stuart to these defendants on or about the 3rd day of January, 1893, nor in fact until on or about the 21st day of January, 1893, did these defendants or either of them have any notice or knowledge that the said bank was insolvent or that it was financially embarrassed or that any or all of the statements hereinbefcore mentioned, made by the said Stuart to these defendants, were not in fact true.

And so these defendants admit that the said proceedings by which the said shares of stock were assigned and transferred from the said Stuart to these defendants, was not made in good faith, but was colorable only and made for the purpose, as well to cheat, wrong, and defraud these defendants, as to avoid the liability and responsibility of the said Stuart as a shareholder in said bank.

And these defendants admit that since the said sale of the said property by these defendants to the said Stuart, and the receipt by them from said Stuart of said shares of stock in part payment thereof, as aforesaid, and by reason of said fact and circumstances, these defendants became, have been and are pecuniarily irresponsible and unable to respond in damages to the plaintiff in this action.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without these, that there is not any matter, cause or thing in the said complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct and respectfully pray to be hence dismissed with their reasonable *cause* (costs) and charges in this behalf most wrongfully sustained.

AMES & PETTIS,
Attorneys for Defendants Gruetter & Joers.

Upon the back of said answer appear indorsements in the words and figures following, to wit: No. 69 "Q." Kent K. Hay-
17 den, receiver, *vs.* Ambrose P. S. Stuart, August T. Gruetter & Chas. F. Joers. Answer of Gruetter & Joers to amended bill. Filed Feb. 24, 1894. Elmer D. Frank, clerk.

Thereupon afterwards, at the January, 1894, term of said court, on the 12th day of March, 1894, the following proceedings were had and done in said case, as appears of record on folio 476, Journal "S" of said court, to wit:

KENT K. HAYDEN, Receiver, Complainant,
vs.
A. P. S. STUART, AUGUST T. GRUETTER, CHARLES F. JOERS, Respondents. } 69, "Q."

MARCH 12TH, 1894.

Ordered that the defendants, August T. Gruetter and Charles F. Joers, be permitted to file a cross-bill herein 12 March, 1894.
(Signed) ELMER S. DUNDY, *Judge.*

Thereupon afterwards, to wit: on the 19th day of March, 1894, an answer of respondent Ambrose P. S. Stuart was filed in said case, which answer is in the words and figures following, to wit:

Answer of Respondent Ambrose P. S. Stuart to the Amended Bill of Complaint of Kent K. Hayden, Complainant.

In the Circuit Court of the United States for the District of Nebraska.

KENT K. HAYDEN (Receiver of the Capital National Bank of Lincoln, Nebraska), Complainant,
vs.
AMBROSE P. S. STUART, AUGUSTUS T. GRUETTER and CHARLES F. JOERS (Copartners as Gruetter & Joers), Respondents.

This respondent now, and at all time hereafter, saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or so much thereof as this respondent is advised that it is material or necessary for him to make answer thereto, answering, saveth:

That on the 16th day of December, 1892, this respondent was the owner and holder of, and has standing in his name one hundred fifty shares capital stock of the said Capital National bank, upon the books of the said association, and that on said day he
18 entered into a contract with his said codefendants Augustus T. Gruetter and Charles F. Joers (under the firm name of Gruetter & Joers) by the terms of which he agreed to purchase, and did purchase, of the said Gruetter & Joers, their certain brick business block, situated on lots D, E, & F subdivision of lots five (5) and (6), of block thirty-nine (39) of the original plat of Lincoln, Nebraska, at an alleged and agreed consideration of $67,500.00.

That there was upon said building at said time a valid existing mortgage indebtedness of $30,000, drawing 6 per cent. interest, upon

which there was accumulated interest at that time, which mortgage and interest, it was agreed respondent should assume and pay off and discharge, as a part of said agreed consideration for said transfer.

It was further then and there agreed that the said one hundred fifty shares of capital stock of the said Capital National bank then held and owned by this respondent, Ambrose P. S. Stuart, should be received by Augustus T. Gruetter and Charles F. Joers (copartners as Gruetter & Joers) at and as of the value of $18,000, and it was further agreed that the taxes thereon, amounting to $250.00, *was* to be paid by the respondent, and the balance of said consideration, amounting to $18,124.34, agreed upon in the sale of said property, was to be paid in cash by this respondent; and on said day, and to bind the said bargain between the said parties, this (respondant) drew his check upon the said Capital National bank, in favor of the said Gruetter & Joers, for the sum of one thousand — ($1,000) which check was presented by the said Gruetter & Joers to the said Capital National bank, and the money received thereon.

That afterwards, and on the 22nd day of December, 1892, the said Augustus T. Gruetter and Charles F. Joers made, executed, and delivered to this respondent a good and sufficient deed to the said premises, pursuant to the said agreement theretofore entered into, and upon said date, and at the time of the delivery of said deed, this respondent wrote his name in blank upon the back of the 150 shares of stock of the said Capital National bank, under the power of attorney thereon, and delivered the same to Augustus T. Gruetter and Charles F. Joers, and the balance of said consideration due and owing to the said Augustus T. Gruetter and Charles F. Joers was paid in the manner following—that is to say: This respondent had a certificate of deposit on the said Capital National bank, in amount $5,000; and another certain certificate of deposit on the said Capital National bank of $2,085.00; and another certificate of deposit on the said Capital National bank of $2,050; and a certain bank book
19 on the Industrial Savings Bank of Lincoln, Nebraska, upon which there was then due $2,000; a certain savings-bank book on the Lincoln savings bank, on which there was due $1,426.84; a certain other certificate of deposit of $1,250.00 on the Industrial Savings Bank of Lincoln, Nebraska, and a certain check of $312.50, drawn on the said Capital National Bank of Lincoln, Nebraska, and all of said certificates of deposit, bank books and checks were by this respondent made payable to the order of the said Augustus T. Gruetter and Charles F. Joers (partners as Gruetter & Joers), and were duly indorsed to them, and the said Augustus T. Gruetter and Charles F. Joers did present the same, and did receive thereon the amount of $17,124.34 in cash, which together with the $1,000 paid on the 16th day of December, 1892, at the time the bargain was made, made a total of $18,124.34, which this respondent paid to the said Augustus T. Gruetter and Charles F. Joers, at the time of the transfer of the said one hundred fifty shares of capital stock of the said Capital National bank.

That the interest upon said mortgage, amounting to $900.00 and the taxes upon said premises, amounting to $250.00 were paid by

this respondent upon the completion of the said trade, and the delivery of the said deed to this respondent.

That the said Augustus T. Gruetter and Charles F. Joers (copartners as Gruetter & Joers) at the time of the said transfer, were engaged in the business of retail furniture sellers, in the city of Lincoln, Nebraska, and were not at this time, as this respondent has been informed and believes, and so answers upon information and belief, insolvent and pecuniarily irresponsible, as charged in complainant's bill, but respondent charges the fact to be that at the time of the said transfer of the said Capital Bank stock, said respondent had no knowledge whatever of the financial condition of the said Augustus T. Gruetter and Charles F. Joers (partners as Gruetter & Joers) but the said Gruetter & Joers had at that time a stock of furniture and carpets of about the value of $20,000.00, and this respondent paid to them, together with said bank stock, the sum of $18.124.34 in cash.

And said respondent further says that he had no knowledge whatever of the condition of the said bank, nor did he know that the said bank was insolvent, but at the time of the transfer of said shares of stock, this respondent believed the bank to be in a good condition, and perfectly solvent, and at the time of the said transfer, this answering defendant had no expectation or anticipation of any failure of the said bank, or change in its condition; nor did he have any expectation of the enforcement of his liability as a shareholder of the said bank, but made the said transfer to the said Augustus T. Gruetter and Charles F. Joers (partners as Gruetter & Joers) in good faith, and for a valuable consideration, and that at the time of the said transfer, the said Gruetter & Joers were in possession of the said business property of the value of $67,500, and that the stock of furniture and carpets at that time in their possession was of the value of $20,000.00, and respondent paid to them, when he delivered said bank stock, the sum in cash of $18,124.34, and respondent had no reason to believe nor did he believe that the said defendants Augustus T. Gruetter and Charles F. Joers (of the said firm of Gruetter & Joers) were insolvent, or in contemplation of insolvency, but believed, and still believes, that they were at that time perfectly solvent, and able to respond to any call for an assessment upon the stock, had it then been made.

That the said transfer of the said bank stock upon the book of the said Capital National bank was made by some other person than this respondent; that upon the sale and transfer being made as aforesaid, respondent delivered the said certificate of stock, duly indorsed in blank to the said Augustus T. Gruetter and Charles F. Joers (copartners as Gruetter & Joers) since which time it has been out of his possession, and in the possession of said Gruetter & Joers.

That the complainant herein has made no attempt or effort to collect the said assessment from the said Augustus T. Gruetter and Charles F. Joers (partners as Gruetter & Joers) although the legal title to the said shares of stock is in the said Gruetter & Joers, and not in this respondent.

That on or about the 23rd day of January, 1893, the said defend-

ants Gruetter & Joers commenced an action in the district court of Lancaster county, Nebraska, against this respondent, which is still pending and undetermined, affirming and alleging the validity of the said contract of transfer of the said one hundred fifty shares of stock to them, and seeking damages against this respondent, by reason of the said one hundred fifty shares of bank stock having been rendered worthless, because of the insolvency of the said Capital National bank, and this respondent denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other answer, cause or thing in the said complainant's bill of complaint contained material or necessary for the respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge or be-
21 lief of this respondent; all of which matters and things, this respondent is ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be dismissed of his costs and charges in this behalf most wrongfully sustained.

AMBROSE P. S. STEWART,
By C. C. FLANSBURG,
His Solicitor.

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 14th day of March, 1894, before me, the undersigned, a notary public, duly commissioned and qualified in and for said county, appeared Ambrose P. S. Stuart, who, being duly sworn according to law, on his oath says that the allegations in the foregoing answer are true.

Subscribed in my presence and sworn to before me this 14th day of March, 1894.

——— ———.

Upon the back of said answer appear indorsements in the words and figures following, to wit: No. 69 "Q." Circuit court of the United States for the district of Nebraska. Kent K. Hayden (receiver), complainant, *vs.* Ambrose P. S. Stuart *et al.*, respondents. Answer of respondent Ambrose P. S. Stuart. Filed Mar. 19, 1894. Elmer D. Frank, clerk. C. C. Flansburg, solicitor for answering respondent.

Thereupon afterwards, to wit, on the 20th day of March, 1894, cross-bill of defendants Gruetter & Joers was filed in said case; which said cross-bill is in the words and figures following to wit:

In the Circuit Court of the United States for the District of Nebraska.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska, Complainant,
vs.
AMBROSE P. S. STUART, AUGUST T. GRUETTER and CHARLES F. JOERS, Copartners as Gruetter & Joers, Respondents.

Cross-bill of Defendants Gruetter & Joers against the Complainant and the Defendant Ambrose P. S. Stuart.

To the honorable the judges of the circuit court of the United States for the district of Nebraska:

The defendants in the above-entitled cause, August T. Gruetter and Charles F. Joers, bring this their cross-bill of complaint against the defendant in said cause, Ambrose P. S. Stuart, and against
22 the complainant therein, Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, and thereupon your orators say:

That your orators and the said defendant, Ambrose P. S. Stuart, and the complainant Kent K. Hayden, are residents of the city of Lincoln and State of Nebraska, and citizens of said State, and that the amount, sum and value in controversy herein exceeds the sum of two thousand dollars exclusive of interest and costs, and that said controversy arises under the Constitution and laws of the United States.

And further your orators complain and show that hitherto and on and prior to the 23rd day of December, 1892, your orators were the owners of a certain tract of real estate situate in the city of Lincoln, Lancaster county, Nebraska, particularly described as being lots D & E & F of Baldwin's subdivision of lots numbers five (5), and six (6), in block No. thirty-four (34), according to the original record plat of the town, now city of Lincoln aforesaid, upon which there was a mortgage to secure an indebtedness of thirty thousand dollars; and that on or about said day the above-named defendant Ambrose P. S. Stuart was the owner in his own name of one hundred fifty shares of the nominal or face amount of one hundred dollars each of the Capital National Bank of Lincoln, Nebraska, a corporation organized and doing business as a bank association at Lincoln, Nebraska, under the national banking act of the United States, and standing in his name upon the books of said bank;

And that on or about and immediately prior to said day, the said defendant Stuart, falsely and fraudulently and for the purpose and with the intent among other things to cheat and defraud your orators, represented and stated and warranted to your orators that he, the said defendant, well knew the condition of the said bank and the value of said shares of stock, and that said bank was in a safe and solvent condition, and abundantly able to pay its debts, and that said stock was fairly and reasonably worth the sum of at least $125 per share, or $18,000 in all; and proposed and urged

that your orators should accept said stock at said sum and valuation of $18,000 upon and as part of the purchase price of said real estate, which your orators were then about to sell and did sell to said def-ndant, for the agreed price of $37,500 subject to said mortgage indebtedness and lien, which sum was the fair and reasonable and market valuation thereof.

And your orators further represent and show unto your *orators* that on the 17th day of December, 1892, one R. C. Outcalt,
23 who was then and for ten years prior thereto had been the cashier of said Capital National bank, and one C. W. Mosher, who was then and for ten years prior thereto had been the president of said Capital National bank, and one C. E. Yates and one R. O. Phillips, who then and for many years prior thereto had been directors of said Capital National bank, caused under and in pursuance of the direction and authority of the said bank and of its board of directors, to be published in the Nebraska State Journal, a daily newspaper of general circulation in said city of Lincoln, a certain statement purporting to be a copy of a report of the condition of said bank to the Comptroller of the Currency of the United States at the close of its business on December 9, 1892, which statement as so published was in the words and figures following, that is to say:

"*Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business December* 9, 1892.

Resources.

Loans and discounts	$768,601 44
Overdrafts secured and unsecured	6,217 74
United States bonds to secure circulation	50,000 00
Stocks, securities, etc	325 00
Due from approved reserve agents	107,090 01
Due from other national banks	17,800 33
Due from State banks and bankers	5,394 72
Banking-house furniture and fixtures	5,770 00
Other real estate & mortgages owned	38,617 92
Current expenses and taxes paid	14,286 28
Checks and other cash items	3,698 56
Exchanges for clearing-house	8,841 16
Bills of other banks	2,355 00
Fractional paper currency, nickels & cents	298 71
Specie	26,789 50
Legal-tender notes	17,431 00
Redemption fund with U. S. Treasurer, (5 per cent. of circulation)	1,350 00
Total	$1,074,867 37

24 Liabilities.

Capital stock paid in		$300,000 00
Surplus fund		6,000 00
Undivided profits		21,180 75
National bank notes outstanding		45,000 00
Individual deposits subject to check	$356,139 33	
Demand certificates of deposit	158,545 88	
Due to other national banks	81,574 14	
Due to State banks and bankers	47,372 89	
		643,632 24
Notes and bills rediscounted		59,054 38
Total		$1,074,867 37

STATE OF NEBRASKA, } ss:
County of Lancaster, }

I, R. C. Outcalt, cashier of the above-named bank do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed and sworn to before me this 15th day of December, 1892.

HAL C. YOUNG,
Notary Public.

Correct.
Attest:
C. W. MOSHER,
C. E. YATES,
R. O. PHILLIPS, *Directors.*"

And your orators further represent and show unto your honors, that on or about or immediately prior to said 23rd day of December, 1892, and before making the said trade and exchange with the said Stuart of said property for said stock, your orator applied to the said R. C. Outcalt to ascertain the condition of said bank, and the value of said stock, informing said Outcalt at the time, that the reason of said inquiry was that your orators were contemplating the purchase of 150 shares of the stock of said bank, and that the said Outcalt in response to said application and inquiry, assured your orators that the said stock was of the fair and reasonable value of $125.00 per share, and that said bank was in a solvent and prosperous condition.

Your orators further represent and show unto your honors, that being wholly ignorant in the premises and relying solely and implicitly upon the said statements and representations of the said defendant Stuart and upon the said statement so published
25 in said newspaper, and the statements and assurances of the said Outcalt, and believing all and every of them to be true, your orators did on or about said last-named day, sell and convey

the said property to the said Stuart for said sum of $37,500.00 subject to said incumbrance, that being the fair and reasonable and market value thereof, and received from said defendant an assignment of said stock as for the sum of $18,000 as part of the purchase price of said property, which assignment was made to your orators by the name of Gruetter & Joers.

And your orators further represent and show unto your honors that long prior to the 23rd day of December, 1892, the said defendants Ambrose P. S. Stuart had been, and that he then was one of the directors of said Capital National bank, and at and before the time of making said representations to said defendants, and at and before the date of the sale and conveyance of said property by your orators to the said Stuart and the assignment by him to them of the said shares of stock, the said defendant Stuart, and the said R. C. Outcalt, cashier, and the said C. W. Mosher, president, and the said C. E. Yates and R. O. Phillips, directors of the said Capital National bank, well knew that said bank was wholly insolvent and unable to pay its debts, that the said shares of its capital stock were not only wholly valueless but were subject and liable to be assessed by the Comptroller of the Currency to the full nominal or par amount thereof, for the payment of the creditors and depositors of said bank, and that the proceeds of such assessment together with all the property and assets of said bank was and would be insufficient for the payment of its said creditors and depositors.

And your orators further represent and show unto your honors that the said officers and directors of said bank and the said defendant Stuart made such statements and representations and warranties to your orators and induced and prevailed upon your orators to convey to said defendant said property and receive from him an assignment of said shares of stock and to procure the transfer thereof upon the books of said bank, from said defendant to your orators, with the deliberate attempt and purpose not only to cheat and defraud your orators out of the said sum of $18,000, which your orators paid to the said Stuart as consideration for the shares as aforesaid, but also to subject your orators in the stead of said Stuart to liability of *liability of* assessment and payment to the amount of the full par value, being $15,000 of said shares of stock, for the benefit of
26 the depositors and creditors of said bank, and enable the defendant thereby to escape and evade his own liability on such assessment as such shareholder.

And your orators further represent and show unto your honors that being wholly in ignorance of the real facts and circumstances with respect to the financial condition and insolvency of said bank, and of the intent, object and purposes of the said defendant Stuart in said transaction, and of the falsity of the said statements and representations by the said officers and directors of said bank, but implicitly relying thereon and fully believing the said bank to be in a solvent and prosperous condition, and said shares to be of the fair and reasonable market value of not less than $125.00 each, your orators did accept an assignment thereof from the said defendant and did procure and consent on or about the 3rd day of January,

1893, to the transfer thereof to your orators upon the books of said bank, and that your orators remained so wholly ignorant of the said several facts and circumstances and of the said intent and purpose of the said defendant Stuart, until on or about the 21st day of January, 1893, when said bank failed and ceased to do business and in consequence thereof was taken (charg-) of by the United States bank examiner.

And your orators further represent and show unto your honors that afterwards and on or about the 6th day of February, 1893, after due examination of the affairs of said bank, the Comptroller of the Currency appointed one John D. Macfarland receiver of said bank, who was duly qualified as such, who afterwards resigned, and on or about the 4th day of May in the year last aforesaid, the complainant, Kent K. Hayden was duly appointed as receiver of said bank by the Comptroller of the Curreney, and afterward duly qualified as such receiver and entered upon the duties of said office, and took possession of the books, records and assets of said bank, and proceeded, and is now proceeding to close up the affairs of said association, and to collect its assets and distribute the same among its creditors.

And your orators further allege that on or about the 10th day of June, 1893, the Comptroller of the Currency made, issued and declared, signed, sealed and published an order of proclamation of that date in which he declared that, whereas, on the proper accounting by the receiver theretofore appointed to collect the assets of the Capital National Bank of Lincoln, Nebraska, and upon the valuation of the uncollected assets remaining in his hands, it appeared to the satisfaction of said comptroller that in order to pay the debts of said (assiciation), it is necessary to enforce the individual
27 liability of the stockholders thereof to the extent thereinafter mentioned; that therefore by virtue of the authority in him vested by law, he did thereby (made) assessment and requisition upon the shareholders of said Capital National bank, for the sum of $300,000, being the full par amount of the capital stock of said bank to be paid to him ratably on or before the 10th day of July, 1893; and did thereby (made) demand upon each and every shareholder of said association for an amount equal to the full par amount of the number of shares held or owned by him respectively, and thereby directed the said Hayden, receiver, to take all necessary proceedings by suit or otherwise, to enforce to that extent the individual liability of said (sh-reholders).

And your orators further represent and show unto your honors that for several years prior to the said 3rd day of January, 1893, and upon and until said date, the said defendant was the owner of and had standing in his name upon the books of said bank, the said 150 shares of the capital stock thereof and had been and was a director in said bank, and was well and familiarly acquainted with its condition and affairs, and of the amount of its indebtedness, and of the value of its assets and resources, and was, as were also the said R. C. Outcalt, C. W. Mosher, C. E. Yates, and R. O. Phillips, and for a long time previous to said last-named date and previous

to said 23rd day of December, 1892, and previous to the said 9th day of December, 1892, had known and were fully aware that said bank was insolvent and that said shareholders would be required to pay the full par value of the stock for the satisfaction of its depositors and creditors.

All of which said actings and doings of the said Stuart and of the said Capital National bank by and through its officers and directors as aforesaid, were contrary to equity and good conscience, and tend to the manifest wrong and injury and oppression of your orators in the premises.

In tender consideration whereof, and forasmuch as your orators are entirely remediless by the strict rules of the common law, and can only have relief in the court of equity where matters of this kind are properly cognizable to the end therefore that the said Ambrose P. S. Stuart and Kent K. Hayden may full, true, and direct answer make to all and singular the matters heretofore stated and charged as fully and freely as though same were hereinafter repeated, and they thereunto distinctly (int-rrogated) respecting the same, but not under oath, answer under oath being hereby expressly waived; and that upon consideration thereof, your honors
28 may find that the said Ambrose P. S. Stuart is, notwithstanding and because — the matters and facts hereinbefore alleged and referred to, still the true and lawful owner of said 150 shares of capital stock of said Capital National bank hereinbefore mentioned, and is solely liable to, and for the payment of the said assessment thereon by the said Comptroller of the Currency, and that said assignment and transfer by the said defendant to your orators was fraudulent and void, both as against your orators and as against the complainant, the receiver of said bank, and said depositors and creditors, and that said bank, and said depositors and creditors, and that said transfer and assignment ought to be, and shall be, by a decree of this court, wholly cancelled and set aside and your orators not only released from any liability or responsibility by reason thereof, but the said Stuart be adjudged and declared to make a full restitution to your orators of the said sum of $18,000, so paid by your orators to said Stuart upon the purchase of said stock, together with interest thereon, from the 23rd day of December, 1892, and the costs of this action, and a reasonable solicitors' fee for its conduct and prosecution; and that for the sum so adjudged to be paid by said defendant to your orators upon the cancellation of said transfer and assignment, execution may be awarded in behalf of your orators and against said Stuart as upon a judgment at law, and that your orators may have such other and further or different relief in the premises as may be agreeable to equity and good conscience, they hereby bringing into court the said certificates of said shares of stock and tendering and offering to deliver the same to the said Stuart or to make such other disposition thereof as this court may order.

May it please your honors to grant unto your orators, the most gracious writ of subpœna issuing out of this honorable court in equity to be directed to the said Ambrose P. S. Stuart and Kent K.

Hayden, thereby commanding them under a certain penalty therein to be specified, to be and appear personally before your honors on a certain day and at a certain place therein to be named, and then and there to answer all and *single* the premises and to stand to, perform and abide by such order and decree therein as to your honors shall seem meet, and your orators shall ever pray.

AMES & PETTIS,
Solicitors for Cross-complainants, Gruetter & Joers.

F. H. WOODS, *Of Counsel.*

Upon the back of said cross-bill appear indorsements in the words and figures following, to wit: No. 69 "Q." Kent K. Hay-
29 den, receiver, *vs.* Ambrose P. S. Stuart, August T. Gruetter, and Chas. F. Joers. Cross-bill of defendants Gruetter & Joers. Filed Mar. 20, 1894. Elmer D. Frank, clerk. Ames & Pettis, sol'rs for cross-complainants.

Thereupon afterwards, on the 20th day of March, 1894, a subpœna on cross-bill was duly issued in said case and returned and filed March 22, 1894; which said subpœna is in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss.:
District of Nebraska, }

The President of the United States of America to Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, and Ambrose P. S. Stuart, Greeting:

We command you and each of you to appear before the judges of the circuit court of the United States for the district of Nebraska, at Omaha, on the first Monday in May next, it being the seventh day of May, A. D. 1894, to answer to the cross-bill of complaint of August T. Gruetter and Charles F. Joers, copartners as Gruetter & Joers, this day filed in the office of the clerk of said court, and then and there to receive and abide by such order and decree as shall then or thereafter be made, upon pain of the said cross-bill being taken as confessed ag-inst you and decree pronounced accordingly.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Omaha, this 20th day of March, A. D. 1894, and of the Independence the 118th year.

[SEAL.] ELMER D. FRANK, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Omaha, aforesaid, on or before the day to which the above writ is returnable as above stated, the cross-complaint will be taken against them as confessed, and a decree entered thereon accordingly.

ELMER D. FRANK, *Clerk.*

Attached to said subpœna is the return of the marshal in the words and figures following, to wit:

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 20th day of March, 1894, I received this subpœna in chancery, and on the 21 day of March, 1894, I served the same upon the within-named Kent K. Hayden, receiver of the Capital National bank, Lincoln, and Ambrose P. S. Stuart, in Lancaster county, State and district of Nebraska, by delivering to, and leaving with each a certified copy thereof, with all the indorsements thereon.

FRANK E. WHITE,
United States Marshal for the District of Nebraska.

Upon the back of said subpœna appear indorsements in the words and figures following, to wit: No. 69 "Q." Circuit Court of the United States for the district of Nebraska, in chancery. Gruetter & Joers, cross-complainants, *vs.* Ambrose P. S. Stuart *et al.* Subpœna in chancery. Returnable to rule day first Monday in May, 1894. Elmer D. Frank, clerk. Filed March 22, 1894. Elmer D. Frank, clerk. Ames & Pettis, cross-comp'ts' sol. Marshal's costs. Service, $4.00. Subsistence, .50. Mileage, 3.30. Total, $7.80.

Thereupon afterwards, to wit, on the 5th day of May, 1894, demurrer of Ambrose P. S. Stuart to the cross-bill was filed in said case; which said demurrer is in the words and figures following, to wit:

In the Circuit Court of the United States within and for the District of Nebraska.

KENT K. HAYDEN, Complainant,
vs.
AMBROSE P. S. STUART *et al.*, Respondents.

The demurrer of Ambrose P. S. Stuart, respondent, to the cross-bill of Augustus T. Gruetter and Charles F. Joers, complainants in said cross-bill.

This respondent, by protestation, not confessing all or any of the matters and things in the cross-bill of the said Augustus T. Gruetter and Charles F. Joers contained to be true in such manner and form as the same *is* therein set forth and alleged, doth demur to said cross-bill, and for cause of demurrer showeth that the said cross-complainants h*ath* not in and by their said bill made or stated such a case as entitles them in a court of equity to any relief against this respondent as to the matters contained in the said bill or any of such matters.

II. That the said cross-bill doth not contain any matter of equity whereon this court can ground any decree or give to the cross-complainants any relief against this respondent.

III. That the said cross-complainants are not entitled upon said cross-bill to the relief for which they pray, because they have a plain and adequate remedy at law.

31 IV. That the court hath no jurisdiction over either the subject-matter in the said cross-complaint set forth, nor over the parties hereto.

V. That the said matters and facts alleged in the said cross-bill are not properly the subject of a cross-bill; neither make or state such a case as in any manner constitutes a defense to the original bill of complaint filed herein, and no relief is asked therein against the complainant in the original bill, Kent K. Hayden, receiver.

VI. That the cross-bill attempts to litigate an independent matter between the respondents to the original bill, without in any manner interposing the same as a defense to the original bill, and without in any way connecting the subject-matter of the cross-bill with the matters contained in the original bill.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this respondent doth demur thereto, and humbly demands the judgment of this court whether he shall be compelled to make any further answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

AMBROSE P. S. STUART,
By C. C. FLANSBURG, *His Solicitor.*

I certify that in my opinion the above demurrer is well founded in point of law.

JAMES McNENEY, *Of Counsel.*

STATE OF NEBRASKA, }
Lancaster County, } ss:

Ambrose P. S. Stuart, being first duly sworn, according to law, on his oath says that he is the respondent named in the cross-complaint in the above-entitled case, and that the demurrer therein is not interposed for delay.

A. P. S. STUART.

Subscribed in my presence, and sworn to before me this 5th day of May, 1894.

VERNE L. LAFFERTY,
[SEAL.] *Notary Public within and for Lancaster County, Neb.*

Upon the back of said demurrer appear indorsements in the words and figures following, to wit: No. 69 "Q." Circuit court of
32 the United States for the district of Nebraska. Kent K. Hayden, complainant, *vs.* Ambrose P. S. Stuart *et al.*, respondents. Demurrer of Ambrose P. S. Stuart to the cross-bill of Augustus T. Gruetter and Charles F. Joers, complainants in said cross-bill. Filed May 5, 1894. Elmer D. Frank, clerk. C. C. Flansburg, solicitor for respondent Stuart.

Thereupon afterwards, to wit, on the 14th day of May, 1894, a replication of Kent K. Hayden, receiver, was filed in said case; which said replication is in the words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

KENT K. HAYDEN, Receiver Capital National Bank,
vs.
A. P. S. STUART. } 69, "Q."

The Replication of Kent K. Hayden, Receiver of Capital National Bank, Plaintiff, to the Answer of A. P. S. Stuart, Defendant.

This repliant, saving and reserving unto himself now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that *they* will aver, maintain and prove his said bill of complaint to be true, certain and sufficient in the law to be answered unto, and that the said answer *to* the said defendant — uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly pray- as in and by his said bill of complaint he has already prayed.

G. M. LAMBERTSON,
Solicitor for Plaintiff.

Upon the back of said replication appear indorsements in the words and figures following, to wit: No. 69 "Q." U. S. circuit court, district of Nebraska, in equity. Kent K. Hayden, receiver, *vs.* A. P. S. Stuart. Replication. Filed May 14, 1894. Elmer D. Frank, clerk. Cobb & Harvey, G. M. Lambertson, solicitors for plaintiff.

Thereupon afterwards, at the May, 1894, term of said court,
33 on the 30th day of July, 1894, the following proceedings were had and done in said case, as appears of record on folio 69, Journal "T" of said court, to wit:

KENT K. HAYDEN, Receiver,
vs.
AMBROSE P. S. STUART *et al.* } 69, "Q."

This cause having been heard on the demurrer of the defendants to the cross-bill herein, and the court being fully advised in the premises, doth now on this day order, adjudge and decree that said demurrer be and the same is hereby overruled.

Defendants to said cross-bill are ruled to answer to the same in twenty days from this date.

Thereupon afterwards, to wit, on the 15th day of March, 1895, testimony on behalf of respondent was filed in said case; which said testimony is in the words and figures following, to wit:

KENT K. HAYDEN, Receiver Capital National Bank,
vs.
A. P. S. STUART. } 69, "Q."

In the Circuit Court of the United States for the District of Nebraska.

KENT K. HAYDEN, Receiver of the Capital National Bank, Complainant,
vs.
AMBROSE P. STUART, Respondent.

Testimony for the Respondent.

Appearances: Messrs. Cobb & Harvey and G. M. Lambertson, for the receiver; Messrs. Harwood, Ames & Pettis, for Gruetter & Joers, cross-petitioners; C. C. Flansburg, for the respondent, A. P. S. Stuart.

Testimony taken at Lincoln, Nebraska, February 20, 1895, at 10 o'clock a. m., at the office of Harwood, Ames & Pettis, pursuant to the following agreement:

It is hereby stipulated by and between the parties hereto that Miss Grace Waring may take depositions and testimony of the
34 witnesses called by and on behalf of the respondent, Ambrose P. S. Stuart, in this case; that the same may be taken in shorthand by her and duly transcribed at length, and that the said evidence when so written and prepared by her shall be of the same force and effect, and be used in the same way and in like manner as if taken on a commission granted or before a regular examiner of this court.

It is further stipulated that the said Grace Waring, as deputy clerk of the United States district court for the district of Nebraska, may administer the oath to the said witnesses called and examined at this time.

It is further stipulated that the said Grace Waring may certify and transmit the said depositions the same as depositions taken *de bene esse*, and they shall have the same effect as if certified to be the examiner.

It is further stipulated and agreed that the time of taking testimony in this case may be extended to the first day of March, 1895.

AMBROSE P. S. STUART, a witness of lawful age, being by me first duly sworn, testified as follows, viz:

Examined by Mr. FLANSBURG:

Q. State your name, age and place of residence.

A. My name is Ambrose P. S. Stuart and I reside in Lincoln, Nebraska, am 74 years old.

Q. How long have you resided in Lincoln, Nebraska?

A. I have resided here since 1875, between 19 and 20 years now.

Q. Were you at any time connected with the Capital National Bank of the City of Lincoln?

A. I was.

Q. When did your connection with that institution cease?

A. It ceased about the 16th of December, 1892.

Q. Were you a stockholder at that time?

A. Just before that I was.

Q. Up to that time?

A. Yes; up to that time.

Q. How much stock did you have up to the 16th day of December, 1892?

A. I had $15,000 of stock for several years; the first amount that I had was $10,000. I don't remember just how long it remained $10,000, but when the capital was increased from $200,000 to $300,000 I took $5,000 more.

Q. What became of this $15,000 in bank stock on the 16th day of December, 1892, or about that time?

35 A. I traded it for a block held by Gruetter & Joers, as part payment for it.

Q. Was that described as lots D, E and F, of Baldwin's subdivision of lots 5 and 6 in block No. 34?

A. Block No. 39.

Q. Block No. 39, according to the original recorded plat of the town, now city of Lincoln, Nebraska?

A. Yes, sir.

Q. You say that was a part of the consideration for the purchase of this property, the description of which was given above?

A. Yes, sir.

Q. State what the balance of the consideration was?

A. The balance of the consideration was cash, between $19,000 and $20,000, $19,500 or thereabouts, and an assumption of a mortgage of $30,000.

Q. Upon the premises?

A. Yes, sir.

Q. Were you a director of the bank at this time, at the time that you negotiated this stock?

A. Yes, sir.

Q. How long had you been a director?

A. Several years; I don't remember just the number of years, from about the time that the bank came up to the corner here of 11th and O, I don't now just remember the date of the transfer of the bank from the Commercial block up to this corner.

Q. How much of your time had you given to the affairs of that bank during the time you were a director?

A. Well, I was one of the committee to examine the paper, the bank paper, and I suppose used to give it, take something like a day or such a matter once in some three months perhaps.

Q. What further time did you give to the duties of the office, if any?

A. Well, I don't think that I gave very much time to the duties of the office except when I was in the bank, I was in the bank almost every day.

Q. Who had the active management of the bank?

A. Well, the president and cashier.

Q. Give their names?

A. C. W. Mosher and R. C. Oucalt.

Q. What did you know concerning the condition of the bank on the 16th day of December, 1892?

A. Well, I didn't know anything but that everything was all right, with this exception, that there was a part of the stock locked up in real estate and when that was sold, as I was given to understand that it would be, and was being sold at the time that
36 we had a conversation about the matter, that then the capital would be all right again, that was what I understood to be the facts in the case.

Q. That was your idea then of the condition of the bank at that time?

A. Why yes, I didn't know anything about really the condition of the bank as to being, as they called, insolvent; I supposed it was all right.

Q. Now, you testified that you transferred the bank stock that you held, 150 shares, as a part payment of the premises described above?

A. Yes, sir.

Q. How did you happen to make that trade or exchange, Professor, tell the circumstances leading to it?

A. Well, a gentleman by the name of Crooks called at my office one day and wanted me to buy the Gruetter block, as it was called.

Lamberston objects to his stating any conversation had with Crooks as hearsay, incompetent, irrelevant and immaterial.

Q. Go on.

A. And I answered that I was not prepared, that I could not buy it, that I had not money enough to buy it. The thing lay in my mind in this way.

Lamberston objects as to his stating what he had in his mind, as not binding, incompetent.

Q. State all the conversation with Crooks, what he said to you and what you said to him?

A. I said I hadn't money enough to buy it, and I supposed that would be the end of it, and intended to have the end of the matter, but he seemed to think that I could buy it, and he stated what it could be had for, and that there was a mortgage of $30,000 on it, and that the place could be had for some $67,500 I think. Well, I said that I had not that amount of money and I did not see how I could make the trade. Finally this thought was suggested, I forget whether by myself or my wife: The bank stock could be taken in as part, and I said, then, that if they chose to take my bank stock I wasn't particular about selling it, but if they chose to take that,

possibly I could raise money enough in cash by assuming the mortgage to pay for the block, and that was the substance of what passed, I think, between us until having seen the other parties, Mr. Crooks——

Q. I just asked you for the conversation with Crooks at that time?

A. Yes, sir, that was the substance of it.

37 Q. Now, when did you see Mr. Crooks again?

A. Well, he came to my office, well from six to ten times perhaps, somewhere along there; I don't know; quite a number of times, and talked the matter over; there was perhaps nearly a week more or less consumed in the talking of the matter over.

Q. Did you and Mr. Crooks finally arrive at an agreement upon this property?

A. We did.

Q. What did you do then?

A. Well, after we came to an agreement I gave Mr. Crooks a check for $1,000 to take to the parties, Mr. Gruetter and Joers, to bind the bargain.

Q. Then what conversation further did you have, if any, with him after this?

A. With Mr. Crooks?

Q. Yes, sir; if any.

A. I don't recall any conversation in particular about the matter until we went down to consum-ate the trade, about the exchange of papers. I have it in my books; I don't remember now just the dates, but I could turn to it if I had my book with me. Went down to Mr. Gruetter's office. Meanwhile I had been down there, I think, once to go over the building and look at it, examine it. Then I went down with Mr. Crooks and we passed the papers. I gave him certificates of deposit amounting to $9,000 and checks and so on, so as to make up to $19,500.00 or thereabouts.

Q. This was down at the building, wasn't it, in the office of Gruetter & Joers, that this was finally consummated?

A. Yes, sir.

Q. Did you have any conversation down there with Gruetter and Joers and Mr. Crooks in their presence in regard to the bank stock or the condition of the bank?

A. Yes; there was some conversation.

Q. State what that conversation was.

A. Well, I said that so far as I knew the bank stock was all right. I told them that there was a block of it locked up in real estate; that my understanding was that when that real estate was sold and the money obtained therefore and put back, that the capital would be then unimpaired, it would be all right again, and that was what I actually thought and what I had been given to understand by the officials of the bank.

Q. Was there any further conversation there at that time in regard to what the stock was worth?

A. I told them that I had been offered, I think, 25 cents premium

some time before, and that I had concluded at that time, when
38 Cross offered, not to sell, because I thought it was yielding me more than I could get for my money anywhere else.

Q. And then you turned the stock over and the certificates of deposit over, and the money, and accepted their deed, did you?

A. Yes, sir; I did; and also a lease.

Q. Was that a part of the consideration in this transfer?

A. Well, yes; it was understood that if the trade was made that they were to lease the building from me for a term of ten years, at $6,000.00 a year.

Q. And you say that lease was turned over at that time to you?

A. It was.

Q. You assumed the mortgage of $30,000.00 at that time in that deed, you say?

Lamberston objects as leading.

A. Yes, sir; I assumed that.

Q. State what, if anything, you have paid on that, either at that time or subsequently.

Lambertson objects as incompetent, irrelevant and immaterial.

A. Well, I have not paid anything except the interest on it.

Q. And the deed was turned over to you at that time and the lease at the time the exchange was made?

A. Yes, sir.

Q. When did you say this was?

A. I could not say just now the day it was. I could tell if I had my books here; I don't remember just the day, but it was not far from the 20th or somewhere along there.

Q. The 20th of what?

A. December.

Q. What years?

A. 1892.

Q. Had you known the members composing this firm prior to this transaction?

A. I had known of them and had some slight acquaintance with them. I knew that they had been in the furniture business over here in Mr. Harwood's block, Harwood and Ames block, for quite a number of years, and my understanding was——

Lambertson objects to his stating his understanding as incompetent, irrelevant and immaterial.

Witness continues:—was that they had been very successful in business there.

Q. State what you know about their solvency or apparent solvency at that time.

39 A. Why, I supposed that they were solvent, that was what I considered them.

Q. What did they have in sight besides $19,500.00 that you turned over to them at that time?

A. Well, they had a large stock of furniture.

Q. I will ask you to state, Mr. Stuart, what your intention was of disposing of this bank stock.

Lambertson objects as incompetent.

A. Why, my intention was, to be able to make the trade, could not do it in any other way.

Q. I will ask you, if you had any fraudulent intentions in disposing of this bank stock?

Lambertson objects as leading and incompetent.

A. No; no fraudulent intention whatever, as honest a trade as I ever made.

Q. You heard the testimony of Mr. Hayden, the receiver in this case, did you not?

A. I did.

Q. You heard his testimony in regard to the interest-paid and interest-received account?

A. Yes, sir.

Q. Do you know anything about the interest-paid account?

A. I don't think that I saw the book, interest-paid account book; that was kept in some other place where I didn't see it. The interest-received book used to lie right on Mr. Outcalt's table, and I saw that two or three times a week; it was (*a*) very convenient of access and I used to look at it almost—not every day, but I used to look into it to see how the amount of receipts figured up, and usually in the course of six months they figured up to somewhere in the neighborhood of $40,000, more or less.

Q. I hand you exhibits marked 1, 2, 3, 4, and 5, and ask you to examine those, and state, if you know, in whose handwriting they appear.

A. Well, I judge these are in C. W. Mosher's handwriting. These two I could not say.

Q. Exhibits 1, 2, and 3, you say are in Mosher's handwriting?

A. Yes, sir; I could not say whose handwriting these others are in, probably some of the clerks in the bank.

Q. Did you ever see these papers before?

A. Yes, sir.

Q. State when and under what circumstances.

A. Well, they were delivered to the board of directors at the time of the meetings, when dividends were declared, and those purport to be statements of receipts and expenses paid.

40 Lambertson objects to his stating what they purport to be as incompetent and immaterial.

Q. Go on?

A. Those are the statements of the receipts of the bank, each one of those for six month- and of the expenses paid, and taken as I suppose right from the books.

Lambertson objects to the statement of which they are, they show for themselves; and also objects to the statement of the witness that he supposes that they are taken from the books.

Q. You may state who had them when you first saw them, and for what purpose.

A. Had what?

Q. These exhibits.

A. Those were from a whole set made out at the end of six months and one was delivered to each director to let him see the condition of the bank, that is to say, the amount that had been received in interest and cash, the amount of expenses, the interest paid, and the salaries, etc., covering the whole condition of the bank as I understood.

Q. And who had these at that time?

A. Each director had one.

Q. But I mean before the directors received them?

A. Mr. Mosher.

Q. And who was he?

A. He was the president of the bank.

Q. He was the one that delivered them to the directors?

A. Yes, sir.

FLANSBURG: Respondent offers in evidence exhibits 1, 2, 3, 4, and five.

Q. You heard the testimony of Mr. Hayden as to the transfer of these certificates of stock of yours; do you know who caused these certificates of stock to be transferred upon the books of the Capital National bank?

A. I do not.

Q. Did you ever cause them to be transferred?

A. I did not.

Q. When did you last see these certificates of stock?

A. When I transferred them to Mr. Gruetter.

Q. You heard the testimony of Mrs. King, did you not, in regard to a conversation with you after the Capital National bank had closed its doors?

A. I did.

Q. You may state what conversation was had with her, if any upon that morning, and how you happened to have that conversation?

41 A. Well, she came to my house on that Monday morning that the bank closed, and was very much excited, and I have no recollection of (say-) what she said I said, that is, the capital of the bank is impaired, because it was what I did not know then. I did say, however, that there was quite a block of the capital locked up in real estate, and that when that was sold and the money obtained put back, why I thought it would be all right. But the bank had closed then, and I said then, furthermore, that I thought the bank would pay out dollar for dollar I thought, or very near it. I had the impression at that time like a great many others——

• Lambertson objects as incompetent, irrelevant and immaterial, to the witness stating what he thought.

Witness continues:—like a great many others that the bank would pay out pretty nearly all of its indebtedness.

Q. Do you remember her further testimony, in regard to a reason you had assigned for selling your stock?

A. I don't remember that particularly.

Q. Did you ever give her any reason at that time for selling your stock?

A. I don't remember that I did.

Q. Did you hear Mr. Gerner's testimony?

A. I did.

Q. Do you remember what he testified in regard to a conversation with you, relative to a sale of your stock?

A. Yes, I remember he testified something with regard to what passed between us. I don't recall distinctly, there may have been something said between us about that, but as far as my being dissatisfied with the management of the bank, I frankly say that I was not in all respects—I remonstrated with Mr. Mosher myself, I told him that there was business enough there for him to attend to, and not to be engaged in so many outside issues, so many schemes, he was concerned in the stave factory, in the Western Manufacturing Company, in the Farmers', Merchants' & Insurance Company, in the Lincoln savings bank and in skating rinks and base-ball business, and all that, and everybody could see as well as myself—it seems to me that these people who were complaining so much about having lost their money, they could see as well as I that this was not the kind of a man to manage their money, that is to say, I think if there was any fault at all about it they ought to be able to see it as well as I.

Q. That was what you said to Mrs. King on that morning?

A. I think that is the substance of what I said.

42 Q. What you said to Mr. Gerner likewise?

Lambertson objects as leading

A. Yes, sir; he could see these things just as well as I.

Q. Did you tell Mr. Gerner in that conversation what amount of capital was tied up in real estate?

A. No; I did not know.

Q. I asked you if you told him?

A. No; I think not, because I would not be telling him anything I did not know, I do not think I ever knew, I do not think I know now exactly how much.

Q. You heard Mr. Hayden's testimony in regard to having sent you a notice of the Comptroller of the Treasurer of the United States, calling for an assessment upon sales of this capital stock?

A. Yes, sir.

Q. You saw the registry receipt he offered in evidence?

A. Yes, sir.

Q. Was that your signature upon there?

A. Well, it didn't look like my signature.

Q. Did you sign that name on that card?

A. Well, I should be inclined to say no, but then I would not be

absolutely clear, I didn't that I know of, but I don't know but that it is my signature.

Q. Did you at that time receive any notice from him?

A. No further than the paper from the Comptroller of the Currency, to my knowledge.

Q. Do you know whether you received that, or whether somebody else received it for you?

A. Well, I don't know; it is possible my wife may have signed that receipt, just possible.

Q. Have you examined the receipt carefully to see whether it is her signature or not?

A. No; I have not.

Q. You could tell by examining it, whether it was your signature or hers?

A. I don't know that I could.

Q. Does your wife sign so nearly like yourself, that you couldn't tell them apart?

A. No; she does not write like me.

Q. Do you think you could tell by examining that card whether it is your signature or your wife's?

A. Well, I couldn't tell positively, it don't look like my signature anyway, and whether it is I would not be able to swear. It is just possible that my hand is not as steady now as it was years ago, and my signature is not always just alike, although substantially it is.

43 Q. Do you know what became of the certificates of deposit and checks turned over by you to Gruetter & Joers in part payment of the purchase of this realty?

A. I think they put them into the First National bank.

Q. Answer yes or no.

A. No, I never saw the checks afterwards; after I delivered them to Mr. Gruetter I never saw the checks afterwards.

Q. Were they ever returned to you?

A. I never have seen them.

Q. What bank were they drawn upon?

A. Upon the Capital National bank.

Q. Were they all certificates of deposit? There were no checks drawn upon the Capital National bank, they were certificates of deposit?

A. $9,000.00 was in certificates of deposit, and then I gave a check that I think was returned to me.

Q. That was paid, that is what I am trying to get at.

A. I am not certain about that; I don't know whether I ever saw that or not, for it was about the time the bank failed, and I do not know whether that check came back to me.

LAMBERTSON:

Q. There was no checks on the First National bank?

A. No; certificates of deposit those were. Then there was an account in the Industrial bank; I forget how much now.

FLANSBURG:

Q. I don't care anything about that. They never tendered you these certificates of deposit and checks back?

A. Not to my knowledge. I know the certificates of deposit never came into my hands, and I would have to look in my stub book to see whether the checks came back.

Q. Now answer the question, did Gruetter & Joers ever offer these checks or certificates of deposit back to you?

A. Not to my knowledge.

Q. You would know if they offered them to you?

A. No, no, they didn't.

Q. You may state where the bank stock is, if you know, now?

A. I do not know.

(A.) Has that ever been offered to you since your delivery of it to Gruetter & Joers?

A. No, sir.

Q. You say those exhibits introduced by the complainant in this case in taking the testimony of Mr. Hayden, the receiver, showing a statement made to the Comptroller of the Treasury of the condition of the Capital National bank at various times, some of
44 which were signed by you, you may state the circumstances under which your signature was placed there.

A. Well, the way the thing was done generally, was this, they made out their statement, the officials of the bank, then they would seek those directors who were the handiest, I think generally, most accessible, and ask them to sign. When Mr. Holmes was alive, his office was right across the street, and he signed a great many because he was very accessible. I was a little further off, and of course not so far as some others, and perhaps I was the next, and that was the fact, as I think, that those most accessible were the ones they called on as directors to sign the statements. That is the way it was done with me.

Q. Did you examine the account or statement before signing it?

A. I just gave a casual glance over the figures. Of course I could not tell anything about it without knowing all about the books and everything, whether it was absolutely correct or not. I had to depend on fidelity of the parties managing the bank.

Q. The president and cashier?

A. Yes, sir.

Q. Could you have told from an examination of the books, whether these accounts were just and correct or not?

A. I do not think I could.

Q. Are you a practical book-keeper?

A. Well, not very much of a one perhaps; still I know enough to keep my own books.

Cross-examination.

By Mr. LAMBERTSON:

Q. Professor Stuart, what business are you engaged in now?

A. Well, I am looking after property in my charge and paying debts, collecting money and paying debts, taxes and so on.

Q. Loaning money also?
A. Don't loan much money in these days.
Q. But you have been engaged in loaning money, have you not?
A. I used to when taxes were not so heavy *are* as they — now, loan a little money.
Q. You loaned considerable from time to time?
A. Not so very much.
Q. Well, of your own and other people's money, you have loaned, have you not, several hundred thousand dollars?

Flansburg objects as not proper cross-examination.

45 A. Oh, no, not so much as that.
Q. You have held a considerable amount of property in your name which you have rented here, have you not, and collected the money from time to time?

Flansburg objects as improper cross-examination.

A. Oh I used to have it, I have charge of it now. I used to have it in my own name, and have charge of it now.
Q. Now, what business or profession were you in before this?
A. Before I came here?
Q. Before you came here, yes, sir?
A. I was in a university, connected with the university as professor and teacher.
Q. What university?
A. Well, several I have been connected with; the last one before I came here, was the University of Illinois.
Q. What was your particular work there?
A. Professor of chemistry.
Q. What other institutions have you been connected with?
A. Well, I was for a very short time, connected with the Pennsylvania Agricultural College, and I was also some four years connected with Harvard University, and previous to that Accadia College.
Q. What position did you hold in Harvard College?

Flansburg objects as improper cross-examination.

A. I was assistant teacher there.
Q. Of what?
A. Chemistry.
Q. Are you a graduate of some institution?

Flandburg objects as improper cross-examination.

A. A graduate of Brown University.
Q. When did you first buy any stock and become connected with the Capital National bank?
A. Well, about the time they moved up from the Commercial block to the corner here, that was about the time.
Q. Do you know what year that was?
A. I do not remember; it was somewhere near 1882, that is in my mind, I am not quite certain whether that is correct or not.

Q. You have really had some connection since it went under the name of the Capital National bank?

A. Well, until I disposed of my stock I was connected with it.

46 Q. Was you connected with the Marsh National bank?

A. No, sir.

Q. You have been a director, have you not, of the bank nearly ever since or since you have been a stockholder in it?

A. Pretty much all the time.

Q. Were you ever vice-president or president of the bank?

A. Never.

Q. You have also been chairman of the finance committee during a large period of your connection with the bank?

A. Well, I don't know as I could say chairman of the finance committee, I was a member of the committee.

Q. At the time you sold your stock, were you chairman of the finance committee?

A. I don't know whether I was or not.

Q. You were anyhow a member of it?

A. Yes, sir.

Q. What were the duties of a member of the finance committee?

A. The duties of the committee were to look over the bank's paper, and to see who had borrowed money, and to note whether they were in the judgment of the committee good, whether their names were financially good.

Q It was your duty largely, to pass upon the paper in the bank?

A. The quality of the paper, yes, sir.

Q. Were you also consulted, and was it part of your duty to advise as to loans that were (*to*) made by the bank?

A. No, sir, that business was left with the managing officers, the president and cashier chiefly. If we found any paper in the bank that we did not think good, we called the attention of the president and cashier to it. I remember distinctly now, the note of ex-Governor Thayer, which Mr. Hayden says he has still, and considers it worthless practically; that I objected to Mr. Mosher having that, told him he had better collect that as soon as it matured.

Q. How long before the failure of the bank was that put in?

A. Well, that was in, I couldn't say exactly, a year or two, a couple of years I should judge, because it was once renewed and the interest was added in, so that at first it was ($) $2,000.00, and then the new note was $2,160.00, or something about that.

Q. When you returned dividends did you count that as an asset, did you deduct that from the net earnings?

A. Well, I did not have anything to do with making out that part of it. I don't know whether they did or not.

Q. It is true, is it not, that in nearly every instance when dividends were returned you made the motion to declare the dividend?

47 A. Well, I do not remember whether I made the motion or not.

Q. You remember that you did make it sometimes, do you not?

A. Well, I do not know as I remember that. Some one would make the motion; I don't know whether I ever made one or not.

Q. So when dividends were returned you never examined the books to see whether any of this paper you thought bad you charged out or not?

A. No.

Q. Now, prior to the time the surplus was decreased, some time along in 1892, was there any bad paper ever charged off the books by the direction of the directors or the finance committee?

A. Not to my knowledge.

Q. So from 1883, the time you were connected with the bank, for ten years, or nearly ten years, up to December 16th or 17th, 1893, there was no bad paper ever charged out except at the time in 1892 when the surplus was decreased or the surplus was applied to the payment of some bad debts?

A. I do not know that there was ever any charged out. The bank examiner had that matter, as I supposed, in charge, and that $30,000.00 that was charged out was at his direction.

Q. At his direction?

A. As I understand. Yet I thought at the time that was a mistake. I was greatly surprised when I saw in the morning paper, when it was published, that statement that the surplus was only $4,000.00, and I thought there had been a mistake.

Q. $6,000.00 (wasn't) it?

A. No, it was $4,000.00; the surplus was $34,000.00.

Q. You need not explain about that now. The question I am putting to you is that the board of directors and finance committee never ordered any bad paper to be charged off the books of the bank or to be deducted from the earnings at any time, with your knowledge?

A. No; not to my knowledge.

Q Now, did you ever discover any other bad paper in the bank, other than this note of (Gove-nor) Thayer?

A. Well, there was some parties that we did not consider extra good. I used to take, in going over the paper, a pencil and a slip of paper and note down the parties that I thought perhaps a little objectionable, and those that were decidedly I would note the names down, and call the attention of Mr. Mosher or Outcalt to it, and he would generally have some explanation, which seemed to be
48 perfectly satisfactory, so that what seemed to be not exactly what it should be was passed as admissible.

Q. Now, do you not remember that the bank lost a considerable sum of money by the failure of Donald, Losson & Simpson, in New York?

A. Yes; I never knew much about that, and they kept that pretty closely to themselves. I knew there was a failure there, and that there was a loss, and they received some of that money back again, just how much I don't know, and just how much they lost I don't know.

Q. You did know there was a loss?

A. I know there was a failure there, and a loss.

Q. Did you not know there was a large loss there?

A. No, I did not know how large it was; I did not know it was a large loss.

Q. Did you ever inquire what amount the loss was?

A. I may have inquired, but they were rather reticent; did not always tell all the facts.

Q. Did not that arouse your suspicions, that they were reticent?

A. I supposed they knew what they were about, and would pull the thing through all right.

Q. You relied on them?

A. Yes, sir.

Q. Did you ever examine the account your bank had with Donald, Losson & Simpson, to ascertain the amount of the loss?

A. No; I never examined the books.

Q. You knew there was some loss, but didn't know how much?

A. I did not know how much.

Q. When you case the next year to return dividends, was there any deduction made on account of that loan?

A. That I could not say.

Q. You made your regular dividends just the same?

A. They made the dividend.

Q. The dividends were always made regularly without reference to any losses, and they varied very little during the history of the bank?

A. Well, they were pretty regular.

Q. What did they average?

A. Well, at first they paid, I think, about 12 per cent. annually; then they dropped to 10, and I think the last one I think was 8.

Q. Did not they sometimes go even above 12 per cent.?

A. It is just possible that for the first year (*of*) two they may have paid once or twice as high as 14; I would not state that to be a fact, but it is possible.

49 Q. Now, was not there a loss in the Sherman County bank by the failure of the Sherman County Banking Company?

A. I think I have heard them state something about that. Yes, I think there was a loss there, but I could not say how large.

Q. Did you ever inquire to find out?

A. I do not remember whether I did or not.

Q. Did not you know that loss was as much as from $14,000 to $20,000?

A. There was one loss, and I am not certain whether that was the bank that was in litigation. I am rather inclined to think that was the one; it was in litigation, and it was adjudged I think in favor of the bank; I don't know whether the bank has got the money or not, some $14,000.00.

Q. Is not the state of facts about this, according to your memory, that about 25 persons subscribed to the stock of the Sherman Banking Company, and gave their notes for the amount of the stock; the notes were negotiated by the Sherman County Banking Company; they indorsed them to the Capital National bank, and subsequently a stockholder by the name of Hogue was sued by the bank on that indorsement for the *the* reason, as was claimed in the petition, that

they had failed to comply with the corporation laws of the State, and judgment was obtained in the lower court, but *there* was not collected up to the time you sold your stock, and is now pending on appeal in the supreme court of the State. Is not that a fact?

Flansburg objects as improper cross-examination and immaterial.

A. Well, I should think that pretty near the state of facts, so far as I remember.

Q. So at the time that you sold your stock, so far as your knowledge went, that judgment had not been paid?

A. I did not know that they had.

Q. Is it not a fact that you said to Mr. Gruetter that the bank had that judgment, and you thought some day it would be collected?

A. I may have made some such statement to Mr. Gruetter; I don't know but that I did.

Q. Is that one of the items which you claimed why the surplus was used to wipe off the books, in your conversation with Mr. Gruetter?

A. Well, it was on account of bad paper at all events.

Q. There was one item of some $14,500.00 that was charged out, that you thought might be collected?

50 A. That was what I was given to understand by Mosher and Outcalt would be the result—that they would get that money.

Q. Now, when you returned any dividends, had you any knowledge that that amount was deducted from the net earnings or gross earnings or considered at all in making dividends?

A. No; I had no knowledge about that; do not know whether it was or not.

Q. Your best judgment and information was that it was not?

A. Well, I do not know.

Q. Now, was there not a large loss scored by the bank by the failure of a man by the name of Small and some bank in which he was connected at Edgar, Nebraska?

A. There was a loss there, but I was given to understand that they had real estate, so as to even it up very nearly.

Q. But the paper anyhow was overdue and was defaulted. Is not that true?

A. I do not know about that; I judge so, though.

Q. How much was the amount of that Small paper?

A. I could not say; I do not know.

Q. Was that *that* loss or defaulted payment of that paper equal to $40,000.00 or $50,000.00?

A. I could not say; I do not remember, I am sure.

Q. Did not you know that was a large amount?

A. Well, no; I did not know whether it was—well, I knew it was represented to me to be a loss, but nothing very definite as to its size.

Q. Now, when did that occur; how long before you sold out?

A. That occurred a good while before I sold out. That was—

well I judge that must have occurred not very long after they came up here to the corner.

Q. Do you know what year it was?

A. I do not.

Q. Wasn't it about the year 1887?

A. My impression was it was before that, but still it may not have been.

Q. Now, was that paid and settled up in 1892, when you went out of the bank?

A. That I could not say; I could not say whether it was or not.

Q. Is it not a fact that the land which you told Mr. Gruetter——

A. Whether the land has been sold yet or not, I am not able to say. I know there was quite a tract of land said to be there, as I was informed, which was to the credit of the bank.

51 Q. Is it not a fact, Mr. Stuart, that there was a big lawsuit which involved all that land during that period of time, and which has since the failure of the bank been decided in the Supreme Court?

A. Well, I could not say about that.

Q. Did not you know that it was involved in litigation?

A. Well, I do not think I knew that it was in litigation. I was given to understand that loss, the Small loss, was covered.

Q. Did you ever inquire as to whether it was in litigation?

A. No, I do not know that I ever did.

Q. Did not you know that it was in litigation?

A. No, I don't think I did.

Q. Now, don't you know, that attorney fees were paid from time (*time to*), Mr. Whedon, as the attorney of the bank in connection with that litigation?

A. With that litigation?

Q. Yes, sir.

A. No, I did not know that. I knew he was attorney for the bank, but I did not know he received any money as fees for services in that litigation.

Q. The bank had a good deal of litigation, didn't it?

A. Well, I don't know as any more than banks generally.

Q. Is that the land that you told Gruetter about as tieing up the capital of the bank?

A. That probably was a part of it, that was the York land, in York county, and the Small land where the two counties that the bank were interested in.

Q. Now, is it not true, that that York County land came to the bank not through or because of the indebtedness of Small, but came to the bank through the indebtedness of E. W. Mosger, the brother of the president of the bank?

A. Yes, sir, I never supposed the Small matter covered any land in York county; that land was in Clay county as I understand.

Q. Clay and Nuckolls county?

A. I did not know there was any in Nuckolls county; I thought it was in the neighborhood of Edgar, in Clay county.

Q. How much land did the bank own down there?

A. I could not say.
Q. Did it own several thousand acres?
A. I could not say how much it owned.
Q. Did it own more than one quarter section?
A. I could not say that, I judged more than one quarter section; in York county there was a long list of paper as long as that, I have seen with an enumeration and some larger and some smaller sections.
Q. A piece of paper three feet long?
52 A. Yes, sir; I think so.
Q. Was not that list of land in Custer county?
A. I don't know anything about Custer county.
Q. Now, to go back to this Small failure, did you not know that covered a large amount of money, Mr. Stuart?
A. I never knew how much.
Q. Do you not know approximately how much?
A. No; I don't know even approximately.
Q. Wasn't it as much as $25,000.00?
A. That I could not say.
Q. Now as a director of that bank, did you think it was right and your duty and good banking to return dividends when so large an amount of your money, and capital and the funds of depositors were tied up in real estate and litigation?

Flansburg objects as assuming facts of which there is no proof, no foundation laid, incompetent and improper cross-examination, and because the witness has already shown that he had no knowledge of this condition of affairs on which this hypothetical question is based.
Lambertson objects to counsel instructing the witness.

A. Well, in the first place I did not know how much there was—how large a part of the capital was tied up there. I had confidence in the managers of the bank, and I supposed they would not declare a dividend unless there was proceeds enough to justify declaring the dividends.
Q. Who declares a dividend anyway?
A. It was always made out by the managers of the institution and the directors of course to declare it.
Q. Dividends are declared by the directors, and not by the officers?
A. Yes; made out through by the *the* officers.
Q. The figures and data may have been presented to you. Now, in looking over the bills receivable, did you ever find a large amount of paper there, signed by E. W. Mosher, the brother of the president of the bank?
A. Yes, sir; I found some paper signed by him.
Q. How much did it amount to?
A. Well, the different notes ran up to $45,000.00 or $50,000.00, somewhere in that neighborhood.
Q. Was that paper in the bank at the time you sold your stock?
A. This paper was indorsed by C. W. Mosher, and I considered that C. W. Mosher's name was just as good——

(Question repeated.) Was that paper in the bank at the time you sold your stock?

53 A. I think it was, so far as I remember.

Q. And was this Small paper in the bank at that time?

A. I do not know, I do not think I ever saw the Small paper. They had a faculty of keeping bad paper out of our sight in some way or other.

Q. When did you learn that fact?

A. Since the bank failed.

Q. Did you not suspect that they were doing it at that time?

A. No, sir; I did not.

Q. Did you ever take the bills receivable and run them over and add them up?

A. No, sir.

Q. If you had done that, you would have discovered that this paper was kept from your sight, would you not?

A. Never had a list made out, no; we simply went over them note by note.

Q. Did you ever have a list of the bills receivable made out?

A. I do not know whether I should or not, I am sure.

Q. Just went over what you found?

A. Yes, what were given us, but I have learned since—well, now, Outcalt I had I think in there for I don't remember how much, but I never saw that note. Mosher had a large note in there borrowed of the bank's money, but I never saw it, and I never saw any of this Donald & Losson paper.

Q. But you suspected there was something wrong there, because they were kind of sneaking about it?

A. Well, they said, they occasionally spoke of this Donald & Losson affair, and I knew there was something there, but how much it involved, I did not know.

Q. Now in making dividends, none of these loans were ever scored off the books?

A. I don't know whether they were or not.

Q. I want to call your attention to this Exhibit "I" that you put in evidence, when is the date that was handed you?

A. I do not remember; if we had the interest-received book here, which I think we ought to have, we could find this amount and fill the date, I do not see any date at all on it.

Q. Now, I notice here, the interest received is $42,082.82 and the interest paid is $10,749.88; did you ever verify that item of interest received?

A. Verify it in what way?

Q. By examining the interest received book?

A. Not in that particular case perhaps, but then as I have said I used to look at that interest-received account as many as two or three times a week, and used to note its gradual increase

54 along, and it would foot up at the end of six months usually in the neighborhood of $35,000.00 or $40,000.00. Now then it shows there $42,000.00 I think.

Q. It shows interest paid $10,749.88; did you ever look at that account?

A. No, sir; I don't think I ever saw that book in the bank.

Q. Did you ask for it?

A. I don't know that I ever asked for it.

Q. As a director that intended to return dividends, was not it just as important to examine the interest-paid account as it was the interest-received account?

A. The interest received, was of course what the dividends were paid out of, but I did not look at the duties of a director as laying upon him such a burden as to spend all his time in examining the various books of the bank, and as it has turned out, after having been manipulated so much, it would not have done any good because we could not have told anything about the condition of the bank.

Q. You do not know when the manipulations were made, they might have been made afterwards, if you had examined them at a time before the manipulation were made, you might have discovered this. Now, I will call your attention to the minutes of the directors' meetings, on page 55, and ask you to look at the book and examine it in connection with Exhibit "I" and state whether or not Exhibit "I" was handed to you on or about the 20th day of January, 1889?

A. That I should think was the same; at all events there is a correspondence there; I should judge this was the same record, a copy of which was delivered to each director.

Q. Calling your attention to a slip of paper pasted in the book there, below the minutes on page 55, and which purports to be signed by W. W. Holmes and A. P. S. Stuart, and ask you if that is your signature there?

A. It looks like it "as per instruction of the board of directors;" what word is that there?

Q. "We have."

A. "Paper of Capital National bank and"——

Q. "And found same satisfactory?"

A. "And found same satisfactory." That of course was the paper of the bank that came under our eyes.

Q. So at that time you did examine the paper of the bank and as per instructions of the board of directors, and report that you have found same satisfactory?

A. Yes, but they did not include any Small papers so far as I recollect or other bad paper.

Q. Did you find any Western Manufacturing Company paper at that time?

A. Oh a little, not much.

55 Q. How much?

A. I don't remember.

Q. Did you consider that good?

A. Well, I did not know anything about the Western Manufacturing Company. There was a time that I considered the Western Manufacturing Company good, and it is a wonder to me that I did

not have some stock in it almost, but it happened so that I did not happen to get into that thing; there was a time that I thought they were making money.

Q. And there was a time that you thought they were not?

A. Afterwards they were not of course, that is as I understand.

Q. But this paper continued in the bank right along?

A. What paper?

Q. The Western Manufacturing Company paper, signed by E. Hurlburt, Jr., manager.

A. Never was very much to my knowledge of that paper in the bank. There was some of it in the bank, not a very large amount it seems to me, I don't remember.

Q. How long before the failure of the bank was it you made your last examination of the paper?

A. I don't remember now, two or three months perhaps, I don't remember exactly the time.

Q. At that time, did you find a lot of Western Manufacturing Company paper in there?

A. Now I don't remember, I don't remember whether we did or not, I could not say.

Q. If you did find it there, did you make any objections to it?

A. Well, I don't remember about that. I don't remember as we made any objections, I don't remember as there was any there then.

Q. Do you remember ever making any objections to that Western Manufacturing Company paper?

A. There was a time when I thought anything connected with that Western Manufacturing Company was good.

Q. But there was a time when you thought it was not good?

A. Afterwards, after I learned, and since the bank——

Q. I mean before the bank failed.

A. I did not know anything about it then. I did not know then, this has all come out since.

Q. Was not there in the bank, at the time you went out of it over $100,000.00 worth of that paper in the bank?

A. I do not know, I could not say

Q. Was not there some of it?

A. I could not say, I do not remember.

Q. Would not you remember a line of paper of that kind?

56 A. I do not remember I am sure now, but I remember there has been in the bank some of that Western Manufacturing Company paper come under my eyes, but as I say there was a time when I understood that paper good.

Q. But there was a time before the failure of the bank when you considered it bad?

A. No; I don't remember; it has come out since.

Q. Did not you make some objections to that paper while (*ypu*) were a director?

A. I do not remember, I do not know that I did.

Q. Did not you at the time of the failure of the bank, at the time you sold out your stock, know that there was some of that paper in the bank?

A. No; I could not say that.

Q. Well, if there was $125,000.00 of that paper in the bank, and more than $110,000.00 that was rediscounted, why wouldn't you have known that fact?

A. I did not know there was so much rediscounted, but I learned afterwards there was a large amount of the paper, every good piece of paper as I understand was disposed of, rediscounted, and the money as I think was put right down in Mosher's pocket or Outcalt's; that was what they did all—the last part of the bank's existence, the last three months of it was spent in borrowing money, in sums of $5,000.00 to $20,000.00 and putting it down in their pockets and discounting the best paper in the bank, and taking that money and putting it in their pockets. That is my honest opinion about it.

Q. Now, I call your attention to Exhibit "2" that you have put in evidence under date of July 5th, 1890, and I find here the interest received $34,751.76, and the interest paid was $7,452.81, now did you examine the interest-paid account at the time this statement was presented?

A. I never examined the books of the interest-paid account. I do not think I ever saw the book until the bank failed. The interest-received book, that was lying right in sight, and that was the reason I looked at that.

Q. You examined that which brought the bank in an income but the outgo you never examined?

A. That is stated you know in the summing up.

Q. All you were after where the dividends and not the expenditures, was not that the fact?

A. Why, I told you I supposed they were managing the business all right, and I had the utmost confidence in them and in
57 their doings, and consequently I did not trouble myself to go to an examination of the books; I think that was the fact with reference to every man that was connected as a director of the bank.

Q. Now in July 9th, 1889, I notice the gross interest receipts are $39,000.00; interest-paid account $8,940.94; did you ever examine the interest-paid account then?

A. No, sir.

Q. You never examined the books at all at any time?

A. No, not of that kind at all.

Q. The only book you ever looked into, as a matter of fact, was to see how much interest the bank was getting?

A. I used to look occasionally at my balance, the ledger.

Q. The only two things you were looking at, was your balance and the amount of interest received by the bank, those two things you kept your eye on?

A. Not particularly; I could not have kept my eye on them any more than the rest, provided the book had been right in sight, that is the only reason.

Q. Did you know about the Marsh paper that was in the bank?

A. No that is a matter of which I have heard something about, that there was a large quantity of Marsh paper, but I don't know

that I ever saw that in the bank here. I have heard it was put in there by Mosher as his capital, paid for—his stock with that paper, but I do not know whether there is any truth in that or not.

Q. Do you know that paper was carried in the bank from the time the Capital National bank was organized up to the date you sold out your stock?

A. I have heard it somewhere, but I do not think I saw it.

Q. Will you swear you did not see it?

A. I do not have any remembrance of seeing it, do not think it was kept with the bills receivable generally, they must have kept it in some other place.

Q. Do you mean to say, Professor, in swearing here that you never saw any of that paper at any time during the time you were a director, and on the finance committee, among the bills receivable?

A. I do not recollect it now. That is a kind of paper they would not care for me to see, the Marsh paper was old paper that was valueless, substantially, I suppose.

Q. You were generally present, were you not, at all meetings of the board of directors when dividends were returned?

A. Well mostly.

58 Q. What is the aggregate amount of dividends you have received since you were a stockholder?

Flansburg objects as incompetent, immaterial, and improper cross-examination.

A. Well, I have never figured them up.

Q. You have been sued for them (hav-n't) you?

A. Yes, I believe so, I think they have sued me for something about $12,000.00 or $13,000.00 of dividends.

Q. You probably received that amount, did you not?

A. Well, I do not know; I say I never figured it up.

Q. Did you have at any time any idea of the aggregate amount of the bills receivable?

A. Why no, I do not know as I ever did have a definite idea of the aggregate amount of the bills receivable, I know that Mosher told me once that they had $8,000.00 on deposit.

Q. How long was that before the failure of the bank?

A. That was some time before the failure of the bank, I do not remember just how long, must have been two or three years perhaps. That was loaned out, and it was the interest on that — figured up to $40,000.00. Now, they pretend to say that the bank never (make) any money, but I do not believe that. The bank could not help making money when it had that amount of deposits on hand, and loaned out and had 10 per cent. on it.

Q. They were paying interest on them?

A. Not on the deposits they were not.

Q. Not paying interest on deposits, what did you pay it on?

A. When I put money in there, I never—well, yes I did receive once in a while a little interest, but banks running an account do not generally pay interest on deposits.

Q. You had a large number of certificates in there, did you not?

A. I had, to be sure, but is that another thing.
Q. They are deposits, are they not?
A. Yes sir, they are deposits.
Q. Did not you pay interest on bank deposits?
A. Well, not on all the bank deposits. When large sums were put in there, probably they paid interest.
Q. Did you pay interest on daily balances to banks?
A. No, I do not think that they —. I know I sometimes had as much as, well, quite a number of thousand of dollars on deposit there, and I never received any interest on them, and I suppose that business men generally when they put their money in there, say, all the way from $2,000.00 to $3,000.00, they did not pay any interest on it.

Q. Did you ever examine to see whether they did or not?
59 A. No; I know in my own case; I know what the fact was that I didn't get any.

Q. Is that the reason you took it away and put it — some other banks?
A. Well, I didn't take it away and put it in some other bank. I kept my business there until the bank failed, and I had $2,500.00 when the bank failed.
Q. Was that in your name?
A. Half of it was in my name.
Q. Whose was the other half in?
A. My wife's.
Q. Was that your money?
(Q.) What money?
Q. That $2,500.00.
A. Half of it was mine and half of it was hers, or thereabouts.
Q. That was your money, and not somebody else's?
A. Why, no; it was my money, of course, and I lost it, too.
Q. Now, did you have some money in the First National bank?
A. At that time?
Q. At the time you sold your stock.
A. No; I did not do any business at all there.
Q. Did you have any certificates of deposit there?
A. I used to do business there.
Q. I mean at that time?
A. No.
Q. Did you have any business in the Industrial savings bank?
A. I had some.
Q. Did you have anything on deposit there?
A. Yes; I did; some.
Q. All of these certificates of deposit you turned over to Mr. Gruetter were issued by the Capital National bank?
A. Not all of them; there was $9,000.00 issued by the Capital National bank. The Industrial savings bank, I forget just how much was drawn from there; several thousand dollars, and then the account of the Lincoln savings bank, I took that.
Q. How much did you have in there?
A. Oh, something over one thousand dollars.

Q. You drew $9,000.09 out of the Capital National bank?

A. Yes; between $10,000.00 and $12,000.00. I gave a check on the Capital National bank for $1,000.00 and then I drew out $9,000.00 certificates of deposit, and then I gave a check for the balance, some $300.00 odd.

60 Q. Now, Mr. Stuart, can you tell the court the time the last dividend, for instance, was made, what was the aggregate good bills receivable in that bank?

A. Well, I could not tell you, because I did not sum them up.

Q. Never did sum them up?

A. Never did; no.

Q. You signed statements showing the amount of bills (receivable), made to the comptroller from time to time, did you not?

A. No; not to my knowledge, did I. You have reference to the statements made by the bank.

Q. Yes, which you have signed as director.

A. Yes; if you take that, of course. I signed some of those statements, but I did not sum up the bills receivable; that was done by others in whom I had confidence, and supposed they did it all right.

Q. Calling your attention to what purports to be a report of the condition of the Capital National bank made to the comptroller of the condition of the bank at the close of business on the 30th day of September, 1892, I will ask you if that is your signature attached there?

A. Yes; I will admit that, of course. I signed that the same as directors do other statements, without knowing any- positive, depending upon the fidelity of those making the statement.

(*A.*) I notice that you here certify that this statement is correct; was it correct, Mr. Stuart?

A. Well, since things have developed as they have, I cannot say that, perhaps it was; I supposed it was correct then.

Q. Did you verify it at all?

A. Why no; I did not verify it.

Q. Did you verify a single item of it?

A. No; not a single item.

Q. You simply signed it because the president or cashier told you to sign it?

A. Because they requested it.

Q. I notice the bills receivable were $759,762.79; do you know whether that is correct or not?

A. No; I do not.

Q. You never added the bills receivable up at all, did you?

A. No; I have said that again and again.

Q. That is only two months and a half before you sold your stock?

A. Well, I had confidence in the whole business then as I had before.

Q. Now, then, did you know at the time that there was the Small matter, amounting to $56,756.53?

61 A. No; I did not; I did not read it all over.

Q. I call your attention here to E. W. Mosher, $48,950.28?
A. Yes, as obtained on that paper.
Q. Did you consider those loans good?
A. The Mosher paper was indorsed by C. W. Mosher, and I considered that good.
Q. Did you usually take paper there wholly on the faith of the indorser?
A. If I thought the indorser was good.
Q. Now, what business was E. W. Mosher engaged in anyway?
A. He was with a man by the name of Stark out there in the loan business, and that money was sent out there by the Capital National bank, to be loaned out on real-estate mortgage-, 10 per cent. I think was the way.
Q. Did you not know no national bank had a right to loan money on real estate?
A. That of course—I think that was the way they did that, at all events that personal security is what was required I think.
Q. Did not you know that all those loans turned out substantially bad?
A. No; I did not know that.
Q. Did not you know that at that time?
A. What time?
Q. The time you sold your stock.
A. No, sir.
Q. Did not you know that at the time you signed this statement?
A. No; I knew there had come a lot of real estate in the hands of the bank and I thought that real estate in your county was good and would liquidate the indebtedness.
Q. Now, in all these statements you signed, you certified there was no bad debts, did you not?
A. Well, if you look at it in that light. I do not know whether that statement implies all that or not. I don't know whether there are any bad debts there or not.
Q. Calling your attention to this line here says, "bad debts nothing"?
A. Yes, sir.

FLANSBURG: You can state if you ever saw that before or make any explanations you want to.

A. I never examined that; I do not know that I ever examined any of these statements directly to go over all of them. There is an immense amount of work in it, and I did not sit down to go over all that and I would not know whether it was correct or not
62 after I had gone through the task. Why, I supposed, as a matter of fact, I certified those statements and signed them just as directors signed those statements in other banks now. I don't suppose there is a bank in this city where the director knows everything is absolutely correct.

LAMBERTSON:

Q. You did know there had been losses in Donald, Losson &

Simpson and in the Sherman County bank, and through Small, and and probably had been losses through Mosher in York county, and yet in all these statements you have signed you made no reference to those at all, is not that true?

A. Well, I did not know what the condition of those—whether those losses had been partially paid and were in the process of being paid. I understand that Donald, Losson & Simpson was in litigation and they would probably get back considerable of their money there, and then that Sherman County bank, I also understood that was in litigation, and that had been already decided in favor of the bank so that the loss there would not amount to much; and the Small matter, there was land there, and I supposed that land would cover the deficit, I knew that land was good down there.

(*A.*) Notwithstanding all these matters you thought the bank was in good condition, did you not?

A. I did; yes, sir.

Q. Did you when you sold this stock to Mr. Gruetter, did you tell him about this Donald & Losson failure years ago?

A. I don't know whether I mentioned that or not.

Q. Did you tell him about this Sherman County loss?

A. I don't know that I mentioned that.

Q. Did you tell him about this loss of Small?

A. Well, I don't think I mentioned any of those that I know of.

Q. Did you tell him about any of these loans and investments with E. W. Mosher in your county?

A. No, because I did not know but that they would all be paid, substantially so.

Q. Did you tell him about the Western Manufacturing Company?

A. I don't think there was anything said about that to my knowledge.

Q. Did you tell him about the Marsh paper?

A. I never saw that in the bank.

Q. Did you tell him about this John M. Thayer business?

A. I forget whether I mentioned that to him or not.

Q. You have no memory of mentioning any of these to him, have you?

A. I don't think I mentioned any of them, and I don't know; I did not know but they would all be settled and the bank sustain the losses and still be good.

63 Q. You remember you did tell him the bank had paid large dividends, did you not, you remember that?

A. No, I don't remember that; I don't know but that I did.

Q. Did you tell him you could buy this stock back again shortly if you could make a turn?

Flansburg objects as incompetent, immaterial and improper cross-examination.

A. I don't remember whether I did or not, and I don't know but I did.

Q. Now, can you remember any other bad paper in the bank to

which you called Mr. Mosher's attention besides this note of John M. Thayer?

A. Oh, I could not tell now, because I used to make a minute of it on a slip of paper, and when I got through with it threw it away.

Q. How many entries did you make?

A. I would make in going over the paper, I would make a dozen or twenty, perhaps; sometimes in small amounts, usually in small amounts they would be.

Adjourned until two o'clock p. m.

LINCOLN, NEBRASKA, *February 20th*, 1895—2 o'clock p. m.

Pursuant to adjournment, the further taking of testimony under the agreement herein is resumed as follows:

Continuation of the cross-examination of Mr. STUART.

By Mr. LAMBERTSON:

Q. I hand you what purports to be the certificate of deposit register of the Capital National bank, and ask you if you ever saw that book before, and whether you ever examined it or not?

Flansburg objects as improper cross-examination.

A. This is the same book as in Mr. Hayden's office?

Q. Yes, sir.

A. I saw it there.

Q. Did you ever see it in the bank prior to the failure of the bank?

A. No, sir.

Q. Did you ever examine any of the certificate of deposit registers of the bank?

A. No, sir.

Q. Did you ever take the drafts that were returned into the bank and paid and compare them with the certificate of deposit register?

A. Never.

64 Q. Never examined to see whether there was any manipulation of those books at all?

A. No; I did not think there was any occasion for it; I had the utmost confidence in the parties managing the bank.

Q. Did you know in a general way the amount of the deposits of the State of Nebraska, of the State treasurer of Nebraska, J. E. Hill?

A. Only in a general way as I heard them reported occasionally.

Q. About how much money did the State treasurer have on deposit in the bank at the date that you sold out?

Flansburg objects as improper cross-examination, and no foundation laid.

A. Well, I could not answer that question from having looked at the books; from the reports that I heard I judge that it was somewhere in the neighborhood of near $300,000.

Q. At the time you sold out?

A. Well, that I did not know at the time; that has come out since, you understand.

Q. You knew the State of Nebraska was a large depositor with the bank?

A. Well, I knew there were pretty large sums occasionally there from the State treasurer, but just how much I did not know, but since——

Q. I am not asking you since; I am asking you about what you knew before the failure of the bank.

A. I did not know then when I sold out.

Q. You simply knew they were a large depositor?

A. I knew they often were large depositors, but how much there was then I did not know.

Q. Did you ever examine the account of the State treasurer to see how much it was?

A. No, sir.

Q. Did you know whether those deposits were on certificates or on an open account?

A. I did not know which it was.

Q. Did you know whether they paid interest on those accounts or not?

A. Only by hearsay.

Q. What do you mean by hearsay?

A. Only by report that they did pay some interest.

Q. You got that from Mr. Mosher or the cashier of the bank?

A. I don't know whether it was Mr. Mosher or some other parties.

65 Q. You know from your dealings and connection with the bank in your duties that (interests) was paid on those deposits by the bank?

Flansburg objects as incompetent, no foundation laid.

A. I simply know by hearsay.

Q. What do you mean by hearsay?

A. From what I heard people speak.

Q. People connected with the bank?

A. They may have been connected with the bank or not.

Q. As director you knew they were paying interest on deposits, didn't you?

A. Not positively.

Q. You knew they were paying on county, city and State deposits, didn't you?

A. I only know in the way I have said; I did not examine the books to see.

Q. That was your understanding of it, wasn't it?

Flansburg objects as calling for an opinion based on hearsay.

A. Well, that was my impression rather that they did pay some interest.

Q. Did not you know the State deposit amounted to two or three hundred thousand dollars?

A. No, I did not know that then.

Q. Did not you know the Capital National bank held more of the State funds than any other bank in the city?

A. No, I did not know that.

Q. Was not that a matter generally talked about, and that you had the best standing with the State treasurer for those deposits than any other bank in the city of Lincoln?

Flansburg objects as incompetent, irrelevant, immaterial.

A. Why no, I did not know that.

Q. You believed it, didn't you?

A. No, I did not believe it; we did not know it.

Q. What rate of interest did your bank pay on certificate of deposits?

A. Well, sometimes they paid one rate and sometimes another; sometime- five and sometimes they paid four I think and I guess in some cases they paid as high as six.

Q. Now, what did you get on these certificates of deposit you had in there that you turned over to Gruetter?

66 A. I think I got on one of them six per cent. and the others I believe were five, that is my recollection now.

Q. What was the current rate at which money was loaned?

A. To parties that came to borrow?

Q. Yes, sir.

A. I think it was 10 per cent.

Q. Is it not true that there was considerable paper in the bank that was loaned out at eight per cent.?

A. There may have been, but I think the usual rate was ten, I do not know but (lat-er*ally*), along at the last, there may have been some more loaned out at eight than previously, but along at the first of the bank's existence on the corner here I don't think there were any loans made for less than ten; I do not know that there were.

Q. Did you receive the notice of the assessment sent by Mr. Hayden as receiver, on the capital stock of the bank, including the stock that you had sold to Mr. Gruetter?

Flansburg objects as improper cross-examination.

A. I found it in a drawer which I had overlooked and I thought at first I had not received any but I found the paper in a drawer, overhauling some of my papers, and I forgot entirely I had received it.

FLANSBURG:

Q. State when you found that.

A. I found it yesterday.

LAMBERTSON:

Q. You remember having received that, don't you?

A. No, I do not remember anything about having received it; it was an utter surprise to me to find an envelope in a drawer marked registered letter.

Q. That was addressed to you, was it?

A. Yes, sir.
Q. Was it opened?
A. Yes, sir.
Q. It was in your papers?
A. Yes, it was among my papers.
Q. What was the date of the postmark?
A. I think it was in July.
Q. About 1893?
A. I think so.
Q. Well, if you had received that notice of that assessment, would you have paid it?

Flansburg objects as improper cross-examination, incompetent.

67 A. Why, I do not think I would, because the substance of the notice was that the stockholders were the ones to be assessed, and I, not being a stockholder, did not consider it belonged to me at all.
Q. So you would not have paid it?
A. Why, no, that is the very question in point now, as I understand it.
Q. Yes, I did not know but what you were putting it on the ground you had never been asked for it?
A. I should have put it on that ground if I had not run against that paper which I had forgotten entirely about, but I don't know how it escaped my mind it got there.
Q. Did your wife get that paper?
A. I do not know; she may have signed, possibly, the receipt.
Q. Did you not tell her to sign it?
A. No; I did not tell her to; I only accidentally happened on to it.
Q. Would she have had authority to sign something like that?

Flansburg objects as incompetent, immaterial, not proper cross-examination.

A. Well, she does sign sometimes in case of express packages, and, well, this would be a case of a letter, I do not know whether they ever allow registered letters to go out of the office—I have an impression that the carrier may have brought it around, and that she may have signed it.
Q. She signs receipts sometimes for moneys paid to you?

Flansburg objects as incompetent, irrelevant, immaterial, not proper cross-examination.

A Yes, sir.
Q. She would be authorized to sign a registry receipt if they would accept it, would not she?

Flansburg objects as incompetent, immaterial, improper cross-examination.

A. If what?

Q. If the post-office authorities would accept her writing your signature you would have no objections to it?

A. I think not.

Q. Did Mr. Hayden ever talk to you about paying this amount before suit was brought?

A. No; I think not; I do not have any recollection now of his having done it.

Q. Did not he ask you to pay this, and you told him you would not do it?

A. It is possible I told him so if he asked me if I would pay it, but I do not recollect now.

68 Q. I will ask you this: Did it occur to you, Mr. Stuart, that six per cent. was a very large rate of interest and a very high rate of interest for banks to pay on certificates of deposit and for moneys that were deposited in that bank?

A. Yes; I thought it was a pretty high rate, that is very true.

Q. Did that matter excite your suspicions?

A. No; it did not excite my suspicions at all.

Q. Did not it make you wonder at times how the bank could pay six per cent. on deposits and yet pay such high dividends?

A. They did not pay such high dividends at last, that was only eight per cent.

Q. That was the last dividend?

A. That was the last year.

Q. But before that they had always paid 10 or 12?

A. They had paid ten sometimes.

Q. For nine years, out of nine and a half years they had paid dividends when you were a stockholder, they had paid ten to twelve per cent.?

A. Most of the time it was ten per cent. I think.

Q. The question is, did not it excite your suspicion, the fact that they were paying such large dividends and at the same time paying such a high rate of interest on deposits?

A. Well, that was only on certificates of deposit; there was a large line of deposits on which they did not pay any interest.

Q. Did you know how much money at the date you sold out, or at (th-) time of the last statement, what amounts of certificates of deposit were outstanding?

A. No, I do not know, and did not then.

Q. Did you ever inquire?

A. No.

Q. Did not you know pretty near $500,000 was on deposit in interest-bearing certificates?

A. No, I did not know that.

Q. Did you know Mr. Mosher was issuing certificates of deposit for $100,000 and entering in the certificate of deposit register for $100?

A. No, sir.

Q. Did you ever examine the old certificates that were paid and returned and on file in the bank and compare them with the certificate of deposit register?

A. No, sir; if I had I would have caught on to the movement.

Q. Did you ever know that even one of these certificates for $2,000 that you have turned over to Mr. Gruetter was entered in the certificate of deposit register for $20?

69 A. I did not until the examination of Mr. Hayden down here.

Q. You did not examine the certificate of deposit register at all?

A. No.

Q. If you had, and compared it with the number of the certificates you then held, you would have discovered it, would not you?

A. Then I should have had a point, then.

Q. But you remained in blissful, blind and profound ignorance of these facts?

A. I had to sum it all up in a word, the utmost confidence in Mosher and Outcalt.

Q. You did not at the time you sold out?

A. Why, yes, I did.

Q. I understood you to say that you did not like the way which they were managing the bank?

A. O, of course, there were some things about Mosher's schemes I did not fancy, but that did not excite my suspicion at all, of his crookedness. I thought he was straight as a string in his business transactions.

Q. You knew he was in the skating-rink business?

A. I knew he had been in it.

Q. You knew he was in the base-ball business?

A. Yes, sir.

Q. You knew he had been in the horse business?

A. Yes, he was a little inclined to that.

Q. You knew Outcalt had a stock horse farm down here?

(*Q.*) Yes, he was in that.

Q. You knew they were in the base-ball business?

A. I don't think Outcalt was.

Q. Mosher was.

A. Yes, sir.

Q. And in the stave and lumber business?

A. Yes, sir.

Q. And the penitentiary contract?

A. Yes, that was what I objected to and told him so.

Q. That was what scared you a little?

A. No; it did not scare me particularly, because——

Q. It was one reason you wanted to get out of the bank?

A. It was one feature that was not very agreeable to me.

Q. That was the real reason you did not like the way he was managing affairs?

A. No; I did not have any particular desire when I sold to get out of the bank, and left what money I had in the bank.

Q. As a matter of fact, one reason you wanted to make this trade was so as to have an excuse to draw out what money you had in the bank?

70 A. No; I do not think that it was.

Q. You would not swear that it was?

FLANSBURG: Of course he swears it was.

Lambertson objects to the statements made by counsel.

FLANSBURG: I want these statements taken down.

So do I.

A. No.

Q. You drew out $10,000 out of the bank, did not you, and turned it over to Mr. Gruetter?

A. Yes, sir.

Q. And was not you a little afraid that you might lose some of that money if you did not draw it out?

A. I do not think the thought occurred to me.

Q. How much money did you draw out of the bank between the date you turned over to him $19,500, to Gruetter, and the time of the failure of the bank?

A. How much money did I draw out of the Capital National bank?

Q. Yes, sir.

A. O, there was a little over $10,000. I might say that I might raise the same objections to my taking money out of the Lincoln savings bank, and of the (*the*) Industrial bank, that I was afraid they would go to pieces, because I took money out of all the banks.

Q. When did you commence putting money in the Industrial savings bank?

A. I think I have had it in ever since it started, more or less.

Q. When did you put money in the Lincoln savings bank?

A. When that started.

Q. Now, you knew, did you not, at the date you made this sale to Gruetter, you knew they would not return a dividend for that six months?

A. Well, I was not positive of it, but I had an intimation they would probably pass the general dividend, and I told Mr. Gruetter so, I think.

Q. Did not you tell Mr. Gruetter, did not you and he haggle about it, and talk about who should have that dividend if it was not passed?

A. I do not remember what was said about that, I am sure.

Q. Did you know of Mosher having any other resources for the money and to obtain the money which he put into these various schemes and enterprises and business in which he was engaged other than the bank?

71 A. No; well, I do not know whether I have heard that his father-in-law was wealthy, and sometimes I have heard that he got some money there, and then I do not know whether I put much confidence in that or not.

Q. Did you know of his ever getting any money there yourself?

A. No; I never knew of it myself.

Q. The presumption or supposition, then, was that the money he put in these various enterprises he got from the Capital National bank?

Flansburg objects as incompetent, improper cross-examination and calling for the presumption of the witness.

A. Well, that might be the presumption perhaps, but I was told by Outcalt that there was not another young man in this town that was making money anything like as fast as Mosher was, and when I looked into Dun's Register I saw that he was creeping right along up, his rate was high, and keep getting higher. Well, of course, I did not understand; I thought the fellow was one of these regular money-catchers—some way or other he made money; I did not know exactly how, and of course if he made money he had to put it into these various enterprises.

Q. Wasn't the grounds of your uneasiness and your dislike of his business methods due to the fact that he was engaged in all these enterprises, and you were afraid the bank would be drawn upon to carry on and support these various enterprises?

A. No; you say uneasy; I was not uneasy. I had the utmost confidence, I have said again and again, in the management of the bank, in Mosher, and I thought that when Mosher's name was put on the back of a note that that was gilt edge, it could not be any better.

Q. Why did you then object to his going into these enterprises?

A. O, well, on general principles I did that.

Q. Your business judgment told you he had entirely too many irons in the fire?

A. That was what any man's business judgment would tell him; still at the same time I thought he was making money in these various enterprises, some of them at least. I did not know whether he made anything out of the skating rink and base ball, I am sure.

Q. He was quite prominent in politics?

A. Yes; he was a politician, too.

Q. He had the penitentiary contract?

A. He has got it yet.

Q. And he was interested in base ball?

72 A. Yes, sir.

Q. And he was in the Western Manufacturing Company?

A. Yes, sir.

Q. And the Southern Stave & Lumber Co.?

A. Yes, sir; and the Farmers' & Merchants' Insurance Company.

Q. And the gas company?

A. Yes, sir.

Q. And the Lincoln savings bank?

A. Yes, sir.

Q. And the legislature?

A. Well, no; he was not in that.

Q. He was interested in it; he was a lobbyist?

A. Yes; a lobbyist.

Q. And you did not like these things?

A. Well, scarcely any business man would.

Q. I am asking what you thought?

FLANSBURG: You can answer it in your own way.

A. Why, I told him myself I thought——
Q. He had better get out of those things?
A. Yes, sir.
Q. You told Gerner that was one reason you wanted to sell out?
A. No; I did not tell Gerner that exactly.
Q. What did you tell Gerner?
A. I do not remember.
Q. Did you tell Gerner you did not like such methods of doing business, and you wanted to run your own business?
A. I may have told him I did not like so many schemes. I told him so, and I do not know but what I told a good many others when the subject has been (broatched), it would be natural for me to do it.
Q. If you thought these matters were all profitable and he was making money in them and the business of the bank properly conducted, why should you object?
A. Well, he might have met with setbacks (unror-seen), as business men, when they have too many irons in the fire, are liable to.
Q. And that might involve the bank?
A. Well, I do not know whether that thought occurred to me or not?
Q. There wasn't anything else you knew about Mosher?
A. I did not suppose he was meddling with the funds of the bank at all in these businesses that he had, and, if not, I did not see how that his having those schemes would be particularly danger-
73 ous to the bank; it was on the general principle that a man should give his attention to the banking business if he is in it, and not to something else.
Q. Did you know that Mosher was a large borrower of the bank?
A. No; I did not know that.
Q. Then where did he get the money to do all this business with?
A. I do not know; I had the idea and I was informed by Outcalt that he was making money. I suppose these different enterprises he was managing in such a manner that he made money by them.
Q. Outcalt had a farm down south here, didn't he, what was the name of that farm, didn't Outcalt have a farm down here called Grassland?
A. Yes, sir; I believe so.
Q. What was that farm devoted to?
A. He had a lot of horses there as I understand.
Q. And a race-track?
A. Yes, I believe so.
Q. Did you ever know anything about the private character of either of these men, did you ever hear any stories about them.
A. I have hear- some stories but never saw anything myself that I could judge from as being what it ought not to be. Still, I have had pretty good evidence from what I have heard others say, common report almost, that they were not what they ought to be, that is, particularly Outcalt; but then as far as that—here was our friend

Montgomery, president of the German National, he was of the same type as you may say, and I guess there might be a great many more added, if you were to go through society.

Q. Still he did not have any reputation that you would approve of as a cashier of a bank?

A. Outcalt?

Q. Yes, sir.

A. No; not exactly, but still I thought he was all straight in his business transactions.

Q. Did not you also hear some talk, and was not there some talk about Mosher himself being a little loose in his habits?

A. Well, I did not until quite—I do not know as I did until the bank failed. I used to think Mosher was all right in that line.

Q. Did not you hear some of these reports before you sold out?

74 A. I don't know that I did. I don't remember about that now; may and may not, I cannot tell.

Q. Do you remember saying to Gerner that about one-half of the capital stock was tied up in real estate?

A. No; I did not know that. When was that?

Q. Prior to the time you sold your stock?

A. No; I don't think I said it because I did not know it.

Q. You knew a large amount of it was?

A. I knew there was quite a block of it, how much I did not know.

Q. Did not you know there was over $100,000 of it?

A. No; I did not know that.

Q. Now, Mr. Stuart, what property did you have standing in your name at the date of this transfer?

FLANSBURG: Respondent objects as incompetent, immaterial, improper cross-examination and not the best evidence.

A. What property?

Q. Yes.

A. Do you mean in real estate?

Q. Yes, in real estate; for instance I will ask you here, did you own the south half of lots 4, 5, & 6, in block 27, Lincoln?

FLANSBURG: Respondent objects as incompetent and improper cross-examination.

A. At what time?

Q. Well, at the time you sold this stock, say the 17th day of December, 1892?

A. I don't remember just now whether I owned that then or not.

Q. You did own it at one time?

A. I did own it at one time.

Q. Is that valuable property?

FLANSBURG: Respondent objects as improper cross-examination, incompetent, no foundation laid.

A. Why, I don't know whether it would be considered valuable property or not.

Q. Where is that located?

A. It is located up here near the university; in front of it next to the new Conservatory of Music.

Q. That is your homestead?

A. Where I live; yes, sir.

Q. Is the title to that in your name?

FLANSBURG: Respondent objects as not the best evidence, incompetent, immaterial and improper cross-examination.

A. No.

75 (—.) Whose name is it in?

FLANSBURG: Respondent objects as not the best evidence, incompetent, immaterial, and improper cross-examination.

A. Charles Holland's.

Q. What was the value of that property in December, 1892?

FLANSBURG: Respondent objects as incompetent, immaterial, improper cross-examination, no foundation laid.

A. Well, I could not say; there has been different values put on it by different parties.

Q. What is the highest value that has been put upon it?

Flansburg objects as improper cross-examination, incompetent.

A. Well, I was asked if I would take $10,000 for it once.

Q. Did you take it?

FLANSBURG: Respondent objects as improper cross-examination, incompetent.

A. No, sir.

Q. You considered it worth $10,000 at that time?

FLANSBURG: Respondent objects as incompetent, immaterial, no foundation laid.

A. That was about boom time; perhaps I might have got it, I don't know.

Q. When did you convey that property?

FLANSBURG: Respondent objects as not the best evidence, incompetent, no foundation laid.

A. I do not remember just when it was transferred.

Q. Is it not true you conveyed that on the 5th day of December, 1893?

Flansburg objects as incompetent, no foundation laid, not the best evidence.

A. *Is it* possible; I don't remember the date.

Q. You conveyed it all in one deed, did you not?

FLANSBURG: Respondent objects as not the best evidence, incompetent, no foundation laid.

A. Yes, sir.

Q. Now, did you own the west half of lot 3 and 9.27 off of the east side of lot 4 in block 54 of Lincoln, now known as lot C in subdivision of lots 1, 2, 3, 4, 5 & 6, in block 54, Lincoln, Nebraska?

76 Flansburg objects as incompetent, improper cross-examination and no foundation laid, immaterial.

A. Yes, sir.

Q. What was the value of that in December 16, 1892, or about that time?

Flansburg objects as incompetent, immaterial, not proper cross-examination, no foundation laid.

A. Some would put one value on it and some another.

Q. What was the highest value put on it?

FLANSBURG: Respondent objects as incompetent, immaterial, not proper cross-examination, no foundation laid.

A. I have not had any value put on it as I know of.

Q. What, in your judgment, was it worth at that time?

Flansburg objects as incompetent, immaterial, not proper cross-examination, no foundation laid.

A. O, I don't know, I suppose it was worth $10,000 or $12,000.

Q. Did you own at that time lot C in Hogeland's subdivision of part of the south half of the northeast quarter of the southwest quarter of section 25, town. 10, north range 6 east, now in the city limits of Lincoln?

Flansburg objects as not proper cross-examination, not the best evidence, incompetent.

A. Yes; that is still in my name.

Q. And what was it worth?

FLANSBURG: Respondent objects as improper cross-examination, not the best evidence, incompetent.

A. That I don't remember.

Q. Give your best judgment?

FLANSBURG: Respondent objects as improper cross-examination, not the best evidence, incompetent.

A. Well, I don't know what it would sell for, I don't know whether it would sell for anything now; don't know whether I could sell it.

Q. What was it worth in December, 1892?

FLANSBURG: Respondent objects as improper cross-examination, not the best evidence, incompetent.

A. I don't know what it would have brought then.

Q. What did you pay for it?

FLANSBURG: Respondent objects as incompetent, immaterial, and not proper cross-examination.

77 A. I have forgotten that; I don't remember what I did pay for it; it was sort of a trade I think that came into my hands.

Q. What have you held it at?

FLANSBURG: Respondent objects as incompetent, immaterial, not proper cross-examination.

A. I suppose it ought to bring somewhere in the neighborhood of $400 or $500; I don't know as you could get that now; I don't believe you could.

Q. Did you (*you*) own about that time, December, 1892, lots 9 and 10 in block 59, Lincoln, Nebraska?

FLANSBURG: Respondent objects as incompetent, improper cross-examination, no foundation laid.

A. Yes; that stood in my name then.

Q. What was it worth? Give your best judgment.

FLANSBURG: Respondent objects as improper cross-examination, no foundation laid, incompetent.

A. I do not know what it would bring; it ought to be worth $12,000 or $15,000 anyway.

Q. Did you own at that time, lot 4 in block 41, Lincoln, Nebraska?

Flansburg objects as immaterial and not proper cross-examination.

A. I think that stood in my name; yes, sir.

Q. What was it worth?

FLANSBURG: Incompetent, no foundation laid and improper cross-examination.

A. Well, I do not know, I suppose that ought to be worth $10,000.00 or $12,000.00, but I do not know as you could sell it for that.

Q. Lots 7 & 8 in block 28, in Kinney's O Street addition, Lincoln, Nebraska, did you own that?

Flansburg objects as improper cross-examination, incompetent and immaterial.

A. I did own it; yes, sir.

Q. What was its value then?

Flansburg objects as incompetent and no foundation laid.

A. Well, I believe I paid $3,000.00 for it.

Q. Was it worth more than that?

A. Well, I don't know whether it would sell for more than that now.

78 Q. I mean in December, 1892, what did you hold it at then?

A. I don't remember, I am sure.

Q. Have you not held it at $5,000.00?
A. Well, I may have held it as high as that possibly.
Q. Lots 3, 4, 5, & 6, in block 2, in Spencer's addition to Lincoln, Nebraska, were you the owner of that in December, 1892?

Flansburg objects as immaterial and not proper cross-examination.

A. I think so; yes, sir.
Q. And what was its value then?

Flansburg objects as incompetent and no foundation laid.

A. Oh, I suppose, perhaps, $5,000.00 or $6,000.00.
Q. Did you own then, in December, 1892, lot 9 in the subdivision of lots 4, 5 & 6, in block 10 in Kinney's O Street addition to Lincoln, Nebraska?

Flansburg objects as immaterial and improper cross-examination.

A. Yes, sir; that stood in my name.
Q. What was its value then?

Flansburg objects as incompetent and no foundation laid.

A. It was appraised at $4,000.00 I think.
Q. What was its value, what would you put it?

Flansburg objects as incompetent and no foundation laid.

A. I suppose it would be somewhat more than that, $5,000 or $6,000.00; I do not know whether it would sell for that or not.
Q. The southwest quarter of section 14, town. 9 north, range 7 east, this is the Baily farm, did that stand in your name?
A. No.
Q. Did not he execute you a deed to that, and did not you execute back to him an agreement to convey the same on certain conditions?

Flansburg objects as incompetent, immaterial, not the best evidence, and improper cross-examination.

A. Yes; he executed a deed and it was of the nature of a mortgage, and the mortgage was foreclosed.
79 Q. Who bought in the property?
A. My wife bought it in.
Q. What was the mortgage on it?
A. There was a first mortgage on it, and there was a mortgage I think that had to be paid off, cleared, for some $2,000.00 or over.
Q. What was your mortgage?
A. $2,000.00 was what I had.
Q. What was the fair value of that farm?

Flansburg objects as incompetent, no foundation laid, improper cross-examination.

A. I don't know, I am sure.
Q. $6,000.00?
A. Well, it is doubtful whether you could get it.

Q. It was worth that then, wasn't it?

Flansburg objects as incompetent, no foundation laid, and not proper cross-examination.

A. I do not know as it was worth any more than it is now.
Q. Did you own the south half of the northwest quarter and the northeast (*east*) quarter of the southwest quarter, section 4, town. 7 north, range 7 east, situate in Lancaster county, Nebraska?

Flansburg objects as incompetent, immaterial and not the best evidence.

Q. Is that down near Hickman somewhere?
A. I don't know where that is.
—. The next farm is the southwest quarter of the southwest — of section 33, town. 8 north, range 7 east.
A. That is down in the neighborhood of Hickman. They are not far apart.
Q. What are those two pieces of land worth?

Flansburg objects as incompetent and no foundation laid.

A. I don't know, I am sure.
Q. What were they worth in 1892?

Flansburg objects as incompetent and no foundation laid.

A. I do not know, I could not say.
Q. Worth $30.00 an acre?
A. I don't know whether they would sell for that.
Q. They would have sold for that in December, 1892?

Flansburg objects as incompetent and no foundation laid.

80 A. I don't know whether they would or not.
Q. What did you hold them at?

Flansburg objects as incompetent and immaterial.

A. I suppose somewhere in the neighborhood of $5,000, or such a matter.
Q. $5,000.00 apiece or together?
A. No, the whole thing; together they make up about a quarter section.
Q. Did you own at that time lots D, E & F, in the subdivision of lots 5 & 6 in block 39 in Lincoln, this Gruetter-Joers property?
A. Yes, that stood in my name then, I think.
Q. That is the property you bought of A. T. Gruetter & Company, or Gruetter & Joers?
A. Yes, sir.
Q. You valued that at $65,000.00?

Flansburg objects as incompetent and no foundation laid.

A. Why no, I don't think I can get——
Q. What did you value it at then?

Flansburg objects as incompetent and no foundation laid.

A. I paid on the basis of $67,500.00, but I don't suppose I could sell it today for $50,000.00.

Q. Did you consider it worth that?

Flansburg objects as incompetent and no foundation laid.

A. Well, I suppose that if the property would pay the rental of $6,000.00 a year for a long lease that it ought to be worth somewhere in that neighborhood.

Q. Did you think it worth that at the time you bought it?

Flansburg objects as incompetent and no foundation laid.

A. I should not have paid it probably if I had not some such idea.

Q. What was your estimate as to its value then without reference to a lease?

Flansburg objects as incompetent and no foundation laid.

A. Well, I had to take it altogether, considering the lease and the property, that was the way I figured it. I don't think
81 I would have paid as much for it if it had not been for the lease.

Q. Taking the lease and all, what did you estimate it to be worth?

Flansburg objects as incompetent and no foundation laid.

A. Oh, I do not know, I am sure. I think that—well, I think $60,000.00 would be a pretty fair price for it even then, but now I don't suppose I could get $50,000.00.

Q. So then, there was $30,000.00 due on the mortgage and $20,000.00 in money; so according to your valuation this $15,000.00 worth of stock instead of being worth $18,000.00 was only worth $10,000.00 according to your own estimate?

Flansburg objects as incompetent and no foundation laid.

A. No; the estimate was taking the lease altogether, I thought $67,500.00 would be a fair valuation altogether, but taking them apart without the lease I would not have paid as much for it.

Q. You would have paid just $60,000.00?

A. I should have thought that a pretty fair price for it.

Q. A little while ago you said you thought even counting the lease and everything it was only worth about $60,000, do you want to take that back?

Flansburg objects as incompetent and no foundation laid.

A. Well, it is not worth that now.

Q. I am asking what it was worth then, what you thought (*you thought*) it was worth in December, 1892? You testified you thought counting the lease and everything it was worth $60,000.00, do you want to take that back?

Flansburg objects as incompetent and no foundation laid.

A. No; I say I considered it with the long lease $67,500. That was my estimate I put on it.

Q. Now returning to this property, all of this property which I have read to you, and which you owned in December, 1892?

Flansburg objects as incompetent, not proper cross-examination and immaterial.

A. Not all of it, no.

82 Q. In December, 1892, it nearly did, all except what you bought of Gruetter & Joers?

Flansburg objects as incompetent, immaterial and not proper cross-examination.

A. This Bailey farm never stood in my name.
Q. With that exception it all stood in your name?
A. Yes, sir; I guess the rest of it did.
Q. You owned it?

Flansburg objects as incompetent, immaterial and not proper cross-examination.

A. Well, I had the title to it.
Q. Did not you own it?

Flansburg objects as incompetent, immaterial, calling for a conclusion and not proper cross-examination.

A. If a man has a title to it he owns it.
Q. Did not you own it, and did not it belong to you?

Flansburg objects as incompetent, immaterial, calling for a conclusion and not proper cross-examination.

A. Certainly, because I had the title to it.
Q. Now, — has the title to all that property?

Flansburg objects as not the best evidence, incompetent, immaterial and not proper cross-examination.

A. Charles Holland.
Q. Who owns it now?
A. Charles Holland.
Q. Do you say he owns it because he has the title to it?

Flansburg objects as not the best evidence, incompetent, immaterial and improper cross-examination.

A. Yes, sir.
Q. Is not that your property just as much now as it was then?

Flansburg objects as not proper cross-examination, incompetent, immaterial and no foundation laid.

A. No, sir.
Q. Don't you own it just as much as you did then?

Flansburg objects as not proper cross-examination, incompetent, immaterial and no foundation laid.

A. No, sir.
Q. Except that you have put the title into his name?

83 Flansburg objects as not proper cross-examination, incompetent, immaterial, and no foundation laid.

A. No, sir.

Q. Have you got any interest in it now, either equitable or inequitable?

Flansburg objects as not proper cross-examination, incompetent, immaterial, and no foundation laid.

A. I have charge of it the same as I did before.

Q. Have you not got an interest in it—I will ask you without any quibbling, have you got any interest in it?

Flansburg objects as not proper cross-examination, incompetent, immaterial, and no foundation laid.

A. I do not see how I can have any interest in it when the title is in another.

Q. I am asking you as a matter of fact as between you and Holland, are not you the real owner of that property, but the title is in him?

Flansburg objects as not proper cross-examination, incompetent, immaterial, and no foundation laid.

A. If the title is in him he owns it.

Q. (*Ts*) that the only reason why you say he owns it?

Flansburg objects as not proper cross-examination, incompetent, immaterial, and no foundation laid.

A. I think that is enough. If a man has the title to a piece of property it is his property it seems to me.

Q. You had the title to the Baily farm, did you not?

Flansburg objects as incompetent, immaterial, not the best evidence, and improper cross-examination.

A. No.

Q. You had the deed to it?

Flansburg objects as immaterial and improper cross-examination.

A. Yes.

Q. This property was all in good condition, was it not?

Flansburg objects as incompetent and improper cross-examination.

A. In good condition; I don't know what you mean by that.

Q. It was good and valuable property?

A. Some of it was pretty good property.

Q. You know the values of property in the city of Lincoln?

A. Oh, it was fair property, I suppose, some of it.

84 Q. You have bought and sold a good deal of property in and about Lincoln, have you not?

A. Some; not very much.

Q. You know the values of real estate in a general way, do you not?

A. In a general way, perhaps.
Q. This property was all incumbered, was it not, except the Gruetter & Joers property?
A. I think most of it was; I don't know but all at that time.
Q. Did you have any liabilities in December, 1892—any notes outstanding?

Flansburg objects as improper cross-examination, incompetent, and immaterial.

A. Yes, sir.
Q. What were they?

Flansburg objects as improper cross-examination, incompetent, and immaterial.

A. Well, I had—that is going into my private affairs. I do not know whether I am at liberty to say exactly what my debts were.
Q. It bears on the question of intent here?
A. I had debts.
Q. What did they amount to?

Flansburg objects as improper cross-examination, incompetent, and immaterial.

A. I do not know.
Q. What did they amount to; give it approximately?

Flansburg objects as improper cross-examination, incompetent, and immaterial.

A. I do not know, I say.
Q. Did they amount to $5,000.00?
A. I could not tell without reckoning them up—going over the papers.
Q. They would not amount to more than $5,000.00?
A. I could not say.
Q. Who were they due to?

Flansburg objects as improper cross-examination, incompetent, and immaterial.

A. Different parties.
Q. Name them.

Flansburg objects as improper cross-examination, incompetent, and immaterial.

85 A. I do not know whether I am under obligations to name the parties that I was in debt to.
Q. Do you decline to name them?
A. It does not seem to me that it is pertinent at all here.
Q. Do you refuse to tell the notary? The court can pass on that afterwards as to pertinency.

Flansburg objects as improper cross-examination, incompetent and immaterial.

A. I do not think I am under any obligations to name my creditors.

Q. Do you owe your wife anything?

Flansburg objects as improper cross-examination, incompetent and immaterial.

A. Why, yes, I am owing her now.

Q. Was she your principal creditor?

Flansburg objects as improper cross-examination, incompetent and immaterial.

A. One of them.

Q. Was she your principal creditor?

Flansburg objects as improper cross-examination, incompetent and immaterial.

A. I don't know whether you could say she was the principal.

Q. Did you owe anybody else?

Flansburg objects as improper cross-examination, incompetent and immaterial.

A. Yes, sir.

Q. Name one of them.

Flansburg objects as improper cross-examination, incompetent and immaterial.

A. I don't think I am under any obligations to name my creditors.

Q. You refuse to do that?

A. I think I will refuse to do it.

Q. Did you owe this man Holland anything at that time?

Flansburg objects as improper cross-examination, incompetent and immaterial.

A. I think so.

Q. How much did you owe him?

Flansburg objects as improper cross-examination, incompetent and immaterial.

86 A. I don't know.

Q. Did you owe him $1,000.00?

A. I have done considerable business with him, and how we stand I don't know.

Q. Do you owe him $500.00?

Flansburg objects as improper cross-examination, incompetent and immaterial.

A. I could not say.

Q. Did you owe him $100.00?

A. I have owed him a good many thousands at different times.

Q. Did you at the time, in December, 1892, owe him a $100,000.00?

Flansburg objects as improper cross-examination, incompetent and immaterial.

A. I don't remember.

Q. At the time this deed was made, in December, 1893, the year after, did you owe Holland anything?

Flansburg objects as improper cross-examination, incompetent and immaterial.

A. I don't remember.

Flansburg objects as incompetent and immaterial.

A. It is specified in the deed, and I see you have looked up the property, and it is specified there what the consideration is.

Q. I want to know what the consideration was, not what is specified in the deed, what was the real consideration of that transfer?

Flansburg objects as incompetent and immaterial.

A. The real consideration was $100,000.00, as I remember.

Q. Did he pay you $100,000.00?

A. No, it was not paid, all of it.

Q. How much has he paid you?

Flansburg objects as incompetent and immaterial.

A. I don't remember just how much.

Q. Has he paid you $100.00?

A. I don't remember.

Q. Has he paid you $200.00?

A. I don't remember.

Q. Has he paid you $300.00?

A. That I don't remember.

Q. Did you take a note from him for it?

A. The transaction is not fully completed yet.

87 Q. What (was) it lack to complete?

Flansburg objects as incompetent and immaterial.

A. That is a matter between him and me.

Q. You refuse to state, do you?

Flansburg objects as incompetent and immaterial.

A. That is private business.

Q. You decline to state?

Flansburg objects as incompetent and immaterial.

A. Yes, sir.

Q. Was there an agreement between you and him, whereby he was to reconvey his property on any considerations?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. No.

Q. Has he made a deed to this property, to you or to any one at your request?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. That is a matter between us, and private.

Q. Has not he made a deed of all his property to your wife at your request?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. Well, I decline to state.

Q. Has your wife got a secret, unrecorded deed of all this real estate?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. I decline to state.

Q. Who is Holland, anyway?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. He is a man.

Q. What is his business?

A. Well, he is what you might say retired from business now.

Q. What was his business before he retired?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

88 A. Well, he was in the mining business for a while.

Q. What other business?

A. Then he has run a farm, too, for a while.

Q. What other business—preacher, wasn't he, for a while?

A. Not to my knowledge.

Q. Was he never a preacher?

A. I did not know he was.

Q. Not a man of any means?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. Yes, he is a man of means, of some means.

Q. What was he worth?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. I don't know.

Q. Worth $5,000.00?

A. I could not tell.

Q. What was your object of conveying this property to Holland, anyway, what was the purpose of it?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. Well, I decline to state what my purpose was.

Q. Was not your real purpose, Mr. Stuart, in conveying this property to Holland to defeat the collection of any suits that might be brought against you by the receiver of the Capital National bank,

of any kind or character, arising out of your connection as a director and stockholder of the Capital National bank?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. I do not know but that a man would be justified in doing that; I do not say that was my motive, however.

Q. Was not that your motive, Professor?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. I decline to say; it is going into things which it seems to me are not particularly pertinent to this examination.

Q. Have you any property nowhere in your name?

A. Why no, I don't know as I have in the city; I have not any property in the city in my name.

Q. Have you any in this State or county?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

89 A. Why that property down at Hickman is, I think, in my name.

Q. When did it get into your name; it was this deed, I think; was not that included in the deed to Holland?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. You ought to know.

Q. Well, I asked you, though.

A. As you have been looking up the affairs and business, I will let you find it out.

Q. I am not testifying now and you are.

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. I decline to state that.

Q. Was it your intention to put it in a deed to Holland?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. Well, I do not say whether it was or not.

Q. You have a power of attorney from Holland, have you not?

A. Yes; did have; have it now.

Q. That power of attorney authorizes you to act for him in all matters; to convey and deed real estate and to collect rents, to settle lawsuits and commence lawsuits and confirm to arbitration, and to do all things in the fullest possible character that he could himself do if he was there, does it not?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. Well, I do not remember exactly the limits of the powers, but

it gives me the power to take charge of his business here in a general way.

Q. How long have you had that power of attorney?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. Well, I have had it a good many years; pretty near ever since I have been here, I think.

Q. Do you know the date of that power of attorney?

A. I don't remember.

Q. Is not the date of that power of attorney December 2nd, 1882?

A. I do not know; I do not remember.

90 Q. So you have deeded away all this property which you have owned here in the city to Holland, knowing that you held the power of attorney that authorized you to deed it to some one else, is not that true, and you could convey and manage it as fully as if you owned it?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. Well, I have the power to take charge of it and collect the rents and take care of them.

Q. Did you ever send this deed to Holland at all?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. I sent him a deed; yes, sir.

Q. Did you ever send him this deed which you put upon record conveying all this property to him?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. I do not remember whether I sent him that deed; I think yes; I guess I did.

Q. Do you think he knows of this transfer, this conveyance?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. Oh, certainly.

Q. Did not you immediately after putting this deed upon record from yourself to Holland execute a deed under your power of attorney from Holland to your wife?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. Well, I decline to state that; I do not think it is pertinent at all.

Q. You refuse to answer that question?

A. Yes, sir.

Q. Are you willing to bring here and produce before the notary and allow the same to be introduced in evidence all of the correspondence between yourself and Holland relative to the conveyance

of this property, all deeds from you to him so far as you have them, and all deeds and conveyances from him to you, whether executed by him personally or under your power of attorney or to your wife, and any other agreement or correspondence?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

91 Q. Do you collect the rents on all this property?

Flansburg objects as incompetent, immaterial and not proper cross-examination.

A. On most of it.
Q. What did you do with those rents?
A. Pay taxes, repairs and so on.
Q. What do you mean by so on?
A. Well, whatever his paying assessments and sidewalks were.
Q. After you have paid all of your paying expenses, taxes, repairs, etc., what do you do with the rest of it?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. I don't have much left.
Q. You have some left, what do you do with it?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. I don't know whether I have any left or not, it is a question.
Q. Do you keep any account of it?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. Yes; keep strict account.
Q. Have you ever remitted any of it to Holland?
A. That is my private business, I don't choose to divulge it.
Q. Is it not a fact that this money you collect from these various properties after paying expenses, repairs, and taxes, etc., you keep and use it just the same as you did when the title to the property stood in your name?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. I decline to answer all of these questions that are my private business and do not concern anybody else.
Q. Was not, Mr. Stuart, the object of making this transfer to beat any judgment that might be obtained in this suit if a decree was rendered by this court requiring you to pay in the amount of this assessment?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. No; (*it*) a decree is rendered I hope to be able to pay it, but

I do not expect there will be any decree rendered against me,
92 because I do not think I am amenable to any decree, I don't think you can obtain one.

Q. What was your object then?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. That is my own private business.

Q. Was not your object in conveying this to him to defeat any judgment that might be obtained against you arising out of the ailure of the Capital National bank?

Flansburg objects as incompetent, immaterial, and not proper cross-examination.

A. That is my own affair, and I decline to answer.

Q. Mr. Stuart, I wish you would look over a part of the list of bills receivable here, which Mr. Hayden has testified to and put in evidence, and see if any of these bills (receiveable) you recognize as having been in the bank. Before you examine them, I will ask you if you did not know that there was, about the time you sold your stock, $141,000.00 of bills receivable that were out in the hands of collectors that were overdue?

A. No, sir; I did not know that. Why, it is very difficult for me to make any statement about these parties, I do not remember the names now, so long ago I could not identify these parties.

Q. Do not you know as a matter of fact, that four-fifths of the bills receivable by the bank at the time you sold your stock, were in fact, bad paper?

A. No; I did not know that.

Q. You know it now, do you not?

A. Well, if that is the statement made by those that have the matter in charge, I suppose I would have to believe it.

Redirect examination.

By Mr. FLANSBURG:

Q. Now, this *t*satement that Mr. Lambertson has just submitted to you, covering $141,011.44 of bills receivable, shows upon its face that these bills receivable were not on hand, do you know whether they were ever on hand when you were examining the bills receivable or not?

A. Well now, I could not tell, because I could not remember the names, I could not do that.

Q. Now, with reference to this statement of September 30th, 1892, regarding the condition of the bank at that time, your name
93 appears signed to the attestation as one of the directors, did you examine this statement at the time it was presented to you?

A. Not particularly; no, I did not examine any of the statements particularly, simply signed my name, supposing that they had got the thing all right. The confidence that I had in the management

was such as lead me to do that. Of course I do not think I should do it again, but I suppose every director does the same thing here in the banks now. I should like to ask Mr. Lambertson——

Q. Never mind that. Mr. Lambertson called your attention on the back of this paper to two items he described as E. W. Mosher, $48,950.28, and J. W. Small, $56,750.53. Do you remember whether that was there when you signed this report?

A. I do not know.

Q. Did you see anything there that states that is bad paper?

A. No, I do not, and I do not know whether that paper of Mosher's, E. W., had Charley's name on the back of it then or not, but the last notes that E. W. Mosher had in the bank had Charley's name on the back, and I regarded them as gilt-edged.

Q. You do not find anything on this statement to show that this is bad paper?

A. I do not find anything there that shows that it is bad paper.

Q. You stated in your cross-examination to Mr. Lambertson on the value of this property that you considered the building down here, the building of Gruetter & Joers, in the making of that trade worth $60,000.00, taking into consideration the lease; I also understand you to say that you consider it worth $67,500.00, considering the lease. What did you mean to say?

A. I mean to say $67,500.00, considering the lease, and without the lease a less value. I don't think the property would be worth $67,500.00 if there was not a good lease connected with it.

Q. I will ask you if the lease or the rentals due under the lease have been paid by Gruetter & Joers?

Lambertson objects as incompetent, irrelevant and immaterial.

A. The first year has been paid, but last year has not been paid, only about half.

Q. I understood you to say, in response to question of Mr. Lambertson, that you drew out a little over $10,000.00 between the time you made the sale of your bank stock to Gruetter & Joers and the time the bank burst up. Now, how much money did you
94 have in there at the time of the transfer to Gruetter & Joers in certificates and open accounts all told, that is in the Capital National bank?

A. Well, somewhere in the neighborhood of $13,000.00, I think, that is, I and my wife together.

Q. Then this $10,000.00 that you say you drew out after making the sale to Gruetter & Joers was the $10,000.00 you drew out in payment of that deal, wasn't it?

A. Yes, that is the certificates of deposit, and $1,000.00 check for binding the bargain.

Q. You only had $13,000.00 in there all told?

A. Somewhere about that, might have been a little more.

Q. I understood you drew out all that you had in the Industrial savings bank?

A. Yes, sir.

Q. And all you had deposited in the Lincoln savings bank?

A. Yes, all of the stock. I sold the stock there, and that was converted into cash.

Q. And you applied this in the payment of the consideration to Gruetter & Joers, and then took enough out of what you had in the Capital National bank to make up the difference and left the balance of your money in the Capital National bank?

Lambertson objects as leading.

A. Yes, sir, left the balance in the Capital National bank.

Q. How much was there then on hand in the Capital National bank?

A. At that time?

Q. Yes, sir.

A. About $2,500.00.

Q. And how much of that was drawn out between the time of the transfer of this stock to Gruetter & Joers and the bursting up of the bank or close of it?

A. There was not any of it drawn out, more put in—that is to say, I tried to make a deposit the very Saturday the bank closed; it did not open Monday, but I did not get to the bank quite soon enough to get the deposit in.

Q. You say you passed upon such paper of the bank as was set out for the finance committee to examine? I understood you to say that this morning.

A. Yes, sir.

Q. Was there ever any paper of Donald, Losson & Simpson there for your inspection?

A. No, sir, I never saw any.

Q. Any of the paper of the Sherman Count*ing* Banking Company there for your inspection?

A. No, never saw any of that.

95 Q. This Small paper, was there any of that presented to you for inspection?

A. I do not remember seeing any of that. As I said before, they kept that poor paper out of the way.

Q. I understand you to say, that you had heard there was some slight loss in some of those matters that I have mentioned, the Donald, Losson & Simpson, the (Small) and the Sherman County Banking Company?

A. Yes; about the Sherman County Banking Company, I do not know, that matter was in litigation as I understood it; the prospect was they would not lose anything there.

Q. What did you understand this real estate was for from Clay county?

Lambertson objects to his stating his understanding, as incompetent, irrelevant and immaterial.

A. That was on account of the Small business.

Q. Now, you say that at several times, Mr. Stuart, you took a tab and pencil and made some memoranda of bills receivable that were objectionable; to whom did you present them, if anybody?

A. I just jotted them down, the names of the parties, and then called the attention of Mosher and Outcalc to them, to get an explanation of what security was there, on what terms the loans had been made, so as to know whether the paper was good or not.

Q. And did you ultimately pass this paper?

A. Yes, frequently and almost always they would make such an explanation as seemed to me satisfactory.

Recross-examination.

By Mr. LAMBERTSON:

Q. Were you acquainted, Mr. Stuart, with the standing of the makers of the bills receivable of the bank?

A. A good many of them or most of them, quite a number of them, that is I thought I knew something about their standing; it is pretty difficult sometimes to know who is good and who is not.

Q. You were connected with two or three other banks in the city, were you not?

A. I was connected with the Lincoln savings bank.

Q. Were you a director of that bank?

A. I was vice-president of it.

Q. Were you a director of the Industrial savings bank?

A. I was not at the time, then, I think; I believe I am now.

Q. You had in these other banks an opportunity of familiarizing yourself with the responsibility and standing of the makers
96 of the bills receivable at the bank, and borrowers of money in this community?

A. More or less so, yes, sir.

Q. So that you felt competent in a general way to pass upon the value of the bills receivable of the Capital National bank?

A. Well, not as fully so as I could wish, but perhaps as much so as other members of the board.

Q. Where is Mr. Mosher, president of this concern, now?

A. Well, I do not know where he is except what report says he is at Sioux Falls.

Q. Serving out a sentence at Sioux Falls?

A. That is what I understand.

Q. What would you consider to be the fair rental value of that property which you purchased of A. T. Gruetter & Company at the time you made the purchase?

A. I considered the rental value which he agreed to pay as being a fair rental.

Witness excused.

W. C. BROOKS, a witness of lawful age, being first duly sworn, testifies as follows:

Examined by Mr. FLANSBURG:

Q. State your name and residence.

A. W. C. Brooks; my place of business is No. 101 South 11th street, Lincoln; real estate and merchandise.

Q. How long have you been engaged in this business?
A. About four years.
Q. Are you acquainted with the respondent, Ambrose P. S. Stuart?
A. Yes, sir.
Q. And A. T. Gruetter and Charles F. Joers?
A. Yes, sir.
Q. Did you ever have any business for Gruetter & Joers in December, 1892, and with Professor Stuart, the respondent?
A. I did, yes, sir.
Q. Was that affecting or concerning the building down on 13th street known as the Gruetter & Joers block?
A. It was, yes, sir.
Q. Will you state the circumstances that lead up to the making of that contract, the conversations you had with Professor Stuart and that he had with you, and how you happened to speak to him upon the subject; go on and tell the circumstance?

Lambertson objects as incompetent, irrelevant, immaterial and leading.

97 A. I had this block down there for sale, and knew at the time that Professor Stuart had some idle money, and went up to see him about selling the block, and he told me that he did not have money enough to buy it, was the first conversation; and we talked about the amount of money and the price of the block, in the start I think we asked $70,000.00 for the block, and finally agreed upon the price of $67,500.00 later on. After talking for some time in regard to the price and location, the way the building was constructed—why I would not say whether it was the first time I went up to see him or the second time, I asked him if he could not put in something else if he did not have money enough, if he could not put in some stock, I mentioned the insurance stock, the Farmers' & Merchants' Insurance Company, and this bank stock which I knew he was interested in both of them. His wife was present, Mrs. Stuart, and he said he did not care to put in his bank stock at the start, because he thought that was pretty good property, but Mrs. Stuart spoke up and said if he could get all his property in one lump she though- he had better consider that about putting his bank stock in——

Lambertson objects to the testimony of what Mrs. Stuart said as incompetent.

(Witness continues:)—and he wanted one and a quarter for his bank stock, and finally he decided if they would take the bank stock at one and a quarter, he would, and I went and saw Messrs. Gruetter & Joers, and they would not pay one and a quarter for it, did not want it at all, at any price, but finally decided if they could get it at what they would find out it was worth, they would take it, and they looked the matter up and we figured back and forth for maybe one or two or three days, and they decided they would take it at $1.20, and they agreed on that, or whether they offered to compromise on $1.20, it is over two years ago, I cannot recollect that, but

it was agreed that it should be taken at $1.20, and we made a contract, paid $1,000.00 down, Professor Stuart gave his check for $1,000.00, and I took it down and gave it to Messrs. Gruetter & Joers, who signed the contract and the papers were delivered. I went with Professor Stuart down there and he gave them part on certificates of deposit and this bank stock and assumed the mortgage of $30,000.00, and paid them the rest in money, or rather gave his check for it.

Q. Who were you representing in this transaction when you first saw Professor Stuart?

A. Gruetter & Joers.

Q. You say you were present when the transaction was finally consummated?

A. Yes, sir.

98 Q. And it was consummated upon the terms that you had practically agreed upon before that, was it?

A. Yes, sir.

Q. Did Professor Stuart ever pay you any commission for making this transaction?

A. No, sir.

Q. Who did pay your commission in this, or agree to?

A. Gruetter & Joers.

Cross-examination.

By Mr. LAMBERTSON:

Q. What did Mr. Stuart say about this stock?

A. He said that he had been offered one and a quarter for it at one time prior to this.

Q. What else did he say about the bank?

A. He did not say anything to me; he did not make any representations about the bank, more than he made at the time we talked over the building there when we closed the deal, there was Mr. Gruetter, Mr. Joers, Mr. Stuart and myself when he spoke about the condition the bank was in. They had had to take some lands, he said, and when they were disposed of the bank would be, in his opinion, in good shape, that (make) it a little slow, they were going to pass the commission.

Q. Commission or dividend?

A. The dividends, I should say.

Q. How much did he say was tied up in land?

A. Well, I could not tell you just now.

Q. Did he say $100,000.00?

A. Well, sir, I could not say how much that was; that was not the part I was interested in.

Q. He said the bank after it realized on those lands, thought it would pay good dividends, and would be a good investment?

A. Yes, he considered it so.

Q. Said so to Gruetter at that time?

A. Yes, it had paid and thought it would again.

Q. Did he say anything about he might buy it back himself again if he made a turn?

A. There was some talk about it at the time.

Q. He made some statement like that, did he not, he would buy it back himself if he could make a turn and get hold of some property?

A. If he could realize on some of his investments, it was property he would like to have, have it back at some time.

Q. At the same price?

99 A. I do not think anything was said about the price; I would not say, but that would be my recollection.

Witness excused.

The respondent offers in evidence Exhibit "6," being the proceedings in a case pending in the district court of Lancaster county, Nebraska, in which Augustus T. Gruetter and Charles F. Joers are plaintiffs and Ambrose P. S. Stuart, defendant.

It is agreed by and between the parties that the signatures of the witness- to the foregoing depositions be waived.

EXHIBIT "I."

C. W. Mosher, pres't; H. J. Walsh, vice-pres't; R. C. Outcalt, cash'r; J. W. Maxwell, ass't cash'r.

Capital National bank.

Capital, $300,000.

LINCOLN, NEB., ——, 188–.

Interest received		$42,082 82
Left over		305 12
		42,387 94
Interest paid		10,749 88
		31,638 06
Wages	7,769 93	
Expenses	2,990 27	
		10,760 20
		20,877 86

EXHIBIT "2."

C. W. Mosher, pres't; H. J. Walsh, vice-pres't; R. C. Outcalt, cash'r; J. W. Maxwell, as't cash'r.

Capital National bank.

Capital, $300,000.

LINCOLN, NEBR., *July* 3, 1890.

Left over		1,098 54
Interest received		34,751 76
		35,850 30
Interest paid	7,452 81	
Expenses	4,072 23	
Wages	6,824 98	
		18,350 11
Net profit		17,500 19

100 EXHIBIT 3.

C. W. Mosher, pres't; H. J. Walsh, vice-pres't; R. C. Outcalt, cash'r; J. W. Maxwell, ass't cash'r.

Capital National bank.

Capital, $300,00-.

LINCOLN, NEB., ——, 18—.

Left over		589 38
Interest received		38,807 51
		39,405 89
Wages	$6,699 98	
Interest paid	10,223 91	
Expenses	4,383 46	
		21,307 35
Net profit		18,098 54

EXHIBIT "4."

C. W. Mosher, pres't; H. J. Walsh, vice-pres't; R. C. Outcalt, cash'r; J. W. Maxwell, as't cash'r.

Capital National bank.

Capital, $300,00–.

LINCOLN, NEB., *July* 9, 1889.

Left over from Jan.....		877 86
Gross interest receipts.....		39,770 89
For six months.....		40,648 75
Paid wages.....	6,811 64	
" interest.....	8,940 94	
" expense.....	4,297 79	
		20,050 37
Net profits.....		20,598 38

EXHIBIT "5."

C. W. Mosher, pres't; H. J. Walsh, vice-pres't; R. C. Outcalt, cash'r; J. W. Maxwell, as't cash'r.

Capital National bank.

Capital, $300,000.

LINCOLN, NEB., *July* 10, 1888.

Statement.

Left over Jan'y 1, '88.....		54 59
Interest earned to July 1, '88.....		38,240 90
		38,295 49
101 Paid out:		
Wages.....	6,678 13	
Expenses.....	5,583 29	
Interest.....	5,728 95	
		17,990 37
Net earnings.....		20,305 12

EXHIBIT "6."

Petition.

In the District Court for Lancaster County, Nebraska.

AUGUST T. GRUETTER and CHARLES F. JOERS, Plaintiffs,
vs.
A. P. S. STUART, Defendant.

For cause of action herein the plaintiffs say that hitherto and on and prior to the 23rd day of December, 1892, these plaintiffs were the owners of a certain tract of real estate situate in the city of Lincoln, Lancaster county, Nebraska, particularly described as being lots D, E, and F, of Baldwin's subdivision of lots numbers five (5) and six (6), in block numbered thirty-nine (39), according to the original recorded plat of the town, now the city, of Lincoln, Nebraska, upon which there was a mortgage to secure an indebtedness of thirty thousand dollars ($30,000), and that on or about said day the above-named defendant, who was then the owner in his own name of one hundred and fifty (150) shares of the nominal or face amount of one hundred dollars ($100) each of the capital stock of the Capital National bank of Lincoln, Nebraska, an incorporation duly organized and doing business as a banking association at Lincoln, Nebraska, under the national banking act of the United States, falsely and fraudulently and for the purpose and with the intent to cheat and defraud these plaintiffs, represented and stated to these plaintiffs that he, the said defendant, well knew the condition of said bank and the value of said shares of stock, and that said bank was in a safe and solvent condition and abundantly able to pay its indebtedness, and that said stock was fairly and reasonably worth the sum of at least one dollar and twenty-five cents ($1.25) per share, or eighteen thousand dollars ($18,000) in full, and proposed and urged that these plaintiffs should accept said stock at said sum and valuation of eighteen thousand dollars ($18,000) upon and as a part of the purchase price of said real estate, which these plaintiffs were then about to sell, and did sell, to said defendant for the agreed price of thirty-seven thousand five hundred dollars ($37,500), subject to said mortgage indebtedness and lien. And these plaintiffs further say, that being wholly ignorant in the premises and relying solely and implicitly upon the said statements and representations of said defendant, and believing them to be true, these plaintiffs did, on or about said last-named day, sell and convey said property to said defendant for said sum of thirty-seven thousand five hundred dollars ($37,500), subject to said incumbrance, that being the fair and reasonable market value thereof, and received from said defendant an assignment of said stock as and for the said sum of eighteen thousand dollars ($18,000.00) as part of the said purchase price of said property, which assignment was made to these plaintiffs, by the name of Gruetter and Joers. Yet these plaintiffs say that at and for long prior to said 23rd day

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of December, 1893, and at and before the time of the making of said representations by said defendant, and at and before the date of the sale and conveyance of said property by these plaintiffs to said defendant and the assignment by him to them of said shares of stock the said defendant well knew that said bank was wholly insolvent and unable to pay its debts, and that the said shares of its capital stock were wholly valueless.

And these plaintiffs further say that as a matter of fact at the time of the making of said representations and at the time of said sale and conveyance and at the time of the assignment by the said defendant to these plaintiffs, as aforesaid, of said shares of capital stock, and at all times since, the said bank has been in fact wholly insolvent and unable to pay its debts, and the said shares of stock have been and now are wholly valueless, and that by reason of the premises these plaintiffs have suffered damages in the sum of eighteen thousand dollars ($18,000), for which amount, and interest thereon, from the 23rd day of December, 1892, and costs of this action, they pray judgment against the defendant.

JOHN H. AMES,
E. F. PETTIS,
Plaintiffs' Attorneys.

STATE OF NEBRASKA, } ss:
Lancaster County, }

August T. Gruetter, being by me first duly sworn, says that he is one of the plaintiffs in the above-entitled action named,
103 and that he believes the facts stated in the foregoing petition are true.

AUGUST T. GRUETTER.

Subscribed in my presence and sworn to before me this 23rd day of January, 1893.

[SEAL.]

F. H. WOODS,
Notary Public.

Indorsed: August T. Gruetter and Charles F. Joers *vs.* A. P. S. Stuart. Petition. Clerk's office, district court. Filed Jan. 23, 1893. E. Baker, clerk dist. court.

Certificate.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

I, E. Baker, clerk of the district court, third judicial district of Nebraska, in and for said county, do hereby certify that the above and foregoing is a true and correct copy of the petition, with all the indorsements therein, in a cause now pending in said court, wherein August T. Gruetter *et al.* are plaintiffs and A. P. S. Stuart is defendant, as the same appears fully upon the records and files of said court and now in my charge remaining as clerk aforesaid.

In testimony whereof I have hereunto set my hand officially and

affixed the seal of said court, at Lincoln, this 26th day of February, A. D. 1895.

E. BAKER, *Clerk D. C.*,
[SEAL.] By W. W. KERLIN, *Deputy.*

Answer.

District Court, Lancaster County, Nebraska.

AUGUST T. GRUETTER and CHARLES F. JOERS, Plaintiffs,
vs.
A. P. S. STUART, Defendant.

Comes now the defendant A. P. S. Stuart and, for his answer to the petition of the plaintiff, admits that in December, 1892, but on and prior to the 22nd day of said month, said plaintiffs were the owners of the land described in said petition; that there was a mortgage lien on the same for $30,000, and that at said time this defendant was the owner of 150 shares of the capital stock of the Capital National Bank of Lincoln, Nebraska.

104 This defendant, further answering, admits that said plaintiffs sold and conveyed to this defendant the land described for the sum of $37,500, subject to the mortgage aforesaid, and that this defendant assigned to said plaintiffs said capital stock aforesaid as part of the purchase price of said property, at said valuation of $18,000.

And further answering, this defendant denies each and every allegation in said petition contained except as hereinbefore specifically admitted.

Wherefore this defendant prays to be hence dismissed with his costs.

S. L. GEISTHARDT &
C. C. FLANSBURG,
Attorneys for Defendant.

STATE OF NEBRASKA, } ss:
Lancaster County, }

A. P. S. Stuart, being first duly sworn, says he is defendant in the above action and believes the allegations on the foregoing answer to be true.

A. P. S. STUART.

Subscribed and sworn to before me this 27th day of February, 1893.

[SEAL.] S. L. GEISTHARDT,
Notary Public.

Indorsed: District court, Lancaster county. August T. Gruetter and Charles F. Joers *vs.* A. P. S. Stuart. Answer. Clerk's office, district court. Filed Feb. 27, 1893. E. Baker, clerk dist. court.

Certificate.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

I, E. S. Baker, clerk of the district court, third judicial district of Nebraska, in and for said county, do hereby certify that the above and foregoing is a true and correct copy of the answer, with all the indorsements thereon, in a cause now pending in said court, wherein August T. Gruetter *et al.* are plaintiffs and A. P. S. Stuart is defendant, as the same appears fully upon the records and files of said court and now in my charge remaining as clerk aforesaid.

105 In testimony whereof, I have hereunto set my hand officially and affixed the seal of said court at Lincoln this 26th day of February, A. D. 1895.

[SEAL.]

E. BAKER, *Clerk D. C.*,
By W. W. KERLIN, *Deputy.*

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, Grace Waring, do hereby certify that A. P. S. Stuart and W. C. C-ooks were by me first severally duly sworn to testify the truth, the whole truth and nothing but the truth, and that the foregoing depositions were taken in shorthand and reduced to writing by myself at the time and place therein specified; that the signatures of said witnesses *was* waived by agreement of parties; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit; that said depositions were taken before me in pursuance to the agreement therein set forth.

I further certify that Exhibits Nos. 1, 2, 3, 4, 5, and 6 (true, exact and perfect copies of which are hereto attached, marked Exhibits 1, 2, 3, 4, 5, & 6) were introduced in evidence in said cause during the taking of said deposition-.

Dated Omaha, March 1, 1895.

GRACE WARING.

Fees.

Per diem	$10 00
Mileage to Lincoln and return	5 50
Transcript, 355 fol's, at 20c	71 00
Swearing 2 witnesses	20
Filing 6 exhibits	60
Certificate	35
Paid by respondent, A. P. S. Stuart	$87 65

Attendance of witnesses:
W. C. Crooks, 1 day, 1 mile.

Upon the back of said testimony appear indorsements in the words and figures following, to wit:

69 "Q." Kent K. Hayden, receiver Capital National bank, complainant, *vs.* A. P. S. Stuart, respondent. Testimony for respondent. Filed Mar. 15, 1895. Elmer D. Frank, clerk.

106 Thereupon afterwards, to wit, on the 8th day of April, 1894, depositions on behalf of complainant were filed in said case; which said depositions are in the words and figures following, to wit:

* * * * * * *

In the Circuit Court of the United States, District of Nebraska.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska, Complainant,
vs.
AMBROSE P. S. STUART, AUGUSTUS T. GRUETTER and CHARLES F. JOERS, Copartners as Gruetter & Joers, Respondents.

DEPOSITIONS.

Stipulation to Take Testimony.

It is hereby stipulated and agreed by and between the complainant and defendant, represented respectively by G. M. Lambertson and C. C. Flansburg, that the testimony in the above-entitled action, taken on behalf of the complainant, and such testimony as the respondent shall care to take before the present notary, may be taken in shorthand by and before E. J. Hedges, notary public, and when the notes are extended and signed by the respective witnesses the same shall be duly certified, transmitted to and filed with the clerk of the circuit court of the United States for the district of Nebraska, and shall have the same force and effect, subject to any objections made at the time such witness is examined, as depositions taken *de bene esse* under the statutes of the United States, and shall have the same force and effect as testimony taken by and before and reported and filed in court by a master or examiner in chancery.

In the Circuit Court of the United States, District of Nebraska.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska, Complainant,
vs.
AMBROSE P. S. STUART *et al.*, Respondents.

It is hereby stipulated and agreed by and between the (cpunsel) for complainant and respondents in the above-entitled action that the time of taking and filing testimony therein may be and is hereby extended until the 9th day of April, A. D. 1895.

G. M. LAMBERTSON,
Attorney for Complainant.
C. C. FLANSBURG,
Attorney for Respondent-.

107 *Testimony for Complainant.*

KENT K. HAYDEN, of lawful age, being by me first duly cautioned, examined, and solemnly sworn, as hereinafter certified, testified as follows:

Questioned by Mr. LAMBERTSON:

Q. State your name, age, and present business.

A. Kent K. Hayden; age, 38; receiver of the Capital National Bank of Lincoln, Nebraska.

Q. In what business were you engaged prior to entering upon the duties of receiver of the Capital National bank?

A. In the banking business.

Q. And how long had you been in the banking business and what particular branches of the business were you engaged in? State fully.

A. I had been in the banking business about 23 years, starting as a messenger boy, book-keeper, teller, assistant cashier, and manager of a bank.

Q. In what kind of banks were you engaged in these various vocations?

A. National banks.

Q. State what official position prior to the present one you have held in connection with national banks and for what periods of time.

A. Cashier of the State National Bank of Lincoln for 8 years; assistant cashier of the Nebraska Bank of Omaha about 3 years; teller of the First National Bank of Omaha about 7 years, and I was national bank examiner for about one year.

Q. How long have you as receiver been in charge of the affairs of the Capital National bank?

A. Since June 1st, 1893.

Q. What was the date of the appointment?

A. May 24th, 1893. It took effect June 1st, 1893.

Q. You may state whether or not from your connection with the banking business and your knowledge of books and the accounts and entries in different banks made in the books you are and consider yourself an expert accountant.

A. I do.

Q. You may state, Mr. Hayden, whether you were directed at any time to make an assessment upon the stockholders and the capital stock of the Capital National bank; and if you answer yes, you may then produce the order of the comptroller to that effect.

A. An order for one hundred per cent. assessment was made upon the capital stock of the Capital National Bank of Lincoln by
108 the Comptroller of the Currency on the date of June 10th, 1893, and I produce a certified copy of the order.

Complainant offers in evidence the certified copy of the order of the comptroller produced and identified by witness, dated June 10th,

1893, directing an assessment on the shareholders of the Capital National Bank of Lincoln, Nebraska.

Respondent objects to the introduction of said order as immaterial.

Said certified copy is hereto attached and made a part hereof, marked Exhibit 1.

Q. Have you the custody of the stock books and the stubs of the stock books of the Capital National bank?

A. I have.

Q. Please introduce them. (Witness produces stock books.) Will you turn to entries in the stubs showing the issue and the date of the issue of any stock or shares of stock to the respondent, A. P. S. Stuart?

A. Yes, sir. (Witness turns to stub entries referred to.)

Complainant offers in evidence what purports to be the stub of certificate No. 36, for 100 shares of stock, issued to Mr. Stuart, of the date of November 1, 1884, and the stub of certificate 53, fifty shares, and dated July 1, 1886.

Respondent objects to this offer as immaterial and incompetent.

Certified copies of said stubs are hereto attached and made a part hereof, marked respectively Exhibit 2 and Exhibit 3.

Q. You may state if you know the handwriting in which these stubs to these certificates of stock are made out.

A. I do.

Q. You may state.

A. They are made out in the handwriting of C. W. Mosher.

Q. Who was C. W. Mosher?

A. He was the president of the bank.

Q. Now, you may state whether or not these certificates were at any time returned to the bank; and, if so, whether they are in the possession of the bank, and if they are you may produce them.

(*Q.*) Yes, sir; they were returned to the bank.

Q. On what date?

A. January 3rd, 1893. Both certificates were returned of that date.

Q. I will ask you if you are acquainted with the (handwriting) of what purports to be the signatures of the cashier and president on these certificates.

A. Yes, sir; I am.

109 Q. Whose signatures are signed to the certificates?

A. R. C. Outcalt, cashier, and C. W. Mosher, president.

Q. Are you acquainted with the signatures of what purports to be the cashier and president on the other certificate, No. 53?

A. Yes, sir.

Q. And whose signatures were there attached?

A. R. C. Outcalt, cashier, and C. W. Mosher, president.

Q. Are you acquainted with the signatures endorsed upon the back to that certificate?

A. I am.

Q. And acquainted with his handwriting?
A. Yes.
Q. And whose signature is it?
A. A. P. S. Stuart.
Q. And whose handwriting on the back of certificate No. 36?
A. A. P. S. Stuart.
Q. You know that to be his handwriting?
A. Yes, sir.
Q. In what kind of a book are those certificates?
A. In the stock-certificate book.
Q. Is that the same certificate book from which you read and which contains the stubs of the certificates of these shares of stock?
A. Yes, sir.

Complain-t offers in evidence certificate No. 36 for 100 shares of stock, bearing date the 1st of November, 1884, and certificate No. 53 for 50 shares of stock, bearing date the 1st day of July, 1886.

To which no objection is offered on the part of the respondent, and the same are hereto attached and made a part hereof, marked respectively Exhibit- 4 and 5.

Q. Have you the stock book in your custody or possession showing that shares of stock, in lieu of these, were issued to any one else?
A. Yes, sir.
Q. You may produce the stub of the certificate.
A. Here it is (producing it).

Complainant offers in evidence stub of certificate No. 153 for 50 shares of stock purporting to have been issued to Gruetter & Joers, of the date of January 3rd, 1893, and of certificate No. 154 for 50 shares of stock issued to Gruetter & Joers of the date, of January 3rd, 1893; also stub of certificate No. 155 for 50 shares of stock issued to Gruetter & Joers, dated January 3, 1893.

110 No objection is made to this offer, and the said stubs are hereto attached and made a part hereof, marked respectively Exhibit 6, Exhibit 7, and Exhibit 8.

Q. I will ask you whether any other shares of stock or any certificates of stock were ever made out and issued to Mr. Stuart, the respondent, than these put in evidence.
A. None that the books show.
Q. Now, was there any other transfer of shares of stock to any one subsequent to this date?
A. One other.
Q. One other?
A. On January 14, 1893.
Q. What was that?

Respondent objects to the question as incompetent, irrelevant, and immaterial.

A. Forty-five shares issued to C. W. Mosher.

Q. Have you, as receiver, the stock ledger?
A. Yes, sir.
Q. Will you produce it?
A. Yes, sir (producing ledger).

Complainant offers in evidence page 753 of Ledger No. 9 of the Capital National bank, for the purpose of showing the stock account of A. P. S. Stuart.

Respondent objects to this offer as incompetent.

Certified copy of said entry is hereto attached and made a part hereof, marked Exhibit 9.

Complainant also offers in evidence from the same book, page 799, showing the stock account of Gruetter & Joers.

Respondent objects to this offer also as incompetent.

A certified copy of said page is hereto attached and made a part hereof, marked Exhibit 10.

Q. Now, Mr. Hayden, what was the date that the bank closed its doors?
A. January 21st, 1893.
Q. You may state whether or not any notice of this assessmen- was ever given to the respondent, Mr. Stuart, and demand made for the payment thereof, and whether payment has ever been made?

Respondent objects as incompetent and calling for a conclusion.

A. Yes; notice in form as furnished by the comptroller was sent to Mr. Stewart by registered mail.
111 Q. Have you ever had any conversation with him personally about it?
A. No, sir.
Q. Have you the registry receipt acknowledging the receipt of this letter?
A. Yes, sir.
Q. You may produce it. (Witness produces registry receipt.) Do you know whose signature is attached to that?
A. Yes, sir.
Q. Whose is it?
A. Mr. Stuart's.
Q. The respondent in this action?
A. Yes, sir.

Complainant offers in evidence the registry receipt produced and identified by witness.

Respondent objects to this offer as incompetent, immaterial, and having no foundation laid.

Said registry receipt is hereto attached and made a part hereof, marked Exhibit 11.

Q. Have you the form of notice that you sent out to Mr. Stuart?
A. Yes, sir.
Q. You may produce it. (Witness produces paper.) Is that a copy of the order you sent to Mr. Stuart?

A. It is except as to being signed by me and addressed to Mr. A. P. S. Stuart.

Complainant offers in evidence what purports to be a copy of the notice sent to Mr. Stuart.

Respondent objects to the offer as immaterial and incompetent and no foundation being laid.

Said copy of notice is hereto attached and made a part hereof, marked Exhibit 12.

Q. Has this assessment been paid by Mr. Stuart?
A. No, sir, no part of it.
Q. Has it been paid by Gruetter & Joers?
A. No, sir.
Q. Nor by any one?
A. No, sir.
Q. Have you in your custody, as receiver of the Capital National bank, the record book of the directors and officers of the Capital National bank, showing the meeting and election of officers?
A. Yes, sir.
Q. You may produce the same.
A. Here it is (producing it).

112 Q. Turn to that part of the record showing the election of Mr. Stuart as a director of the Capital National bank. What is the record you hold in your hand, Mr. Hayden?

A. It is the record of the meetings of the stockholders and directors.

Q. I will ask you if you are acquainted with the handwriting of R. C. Outcalt, cashier and secretary of the bank, and C. W. Mosher, the president?

A. I am.

Q. I direct your attention to pages 36 and 37, what purports to be a special meeting of the directors held May 23, 1884, and you may state whose signatures are attached.

A. R. C. Outcalt, secretary of the board of directors, and C. W. Mosher, president.

Complainant offers in evidence on pages 36 and 37 of this record what purports to be a record of a special meeting held by the directors May 23, 1884.

Respondent objects to this offer as immaterial and incompetent.

A certified copy of said pages is hereto attached and made a part hereof, marked Exhibit 13.

Q. Now, you may turn to said record, to what purports to be the record of another meeting of the directors in which the respondent, A. P. S. Stuart, participated?

A. On page 40 is a record.

Complainant offers in evidence on page 40 of said record, what purports to be a record of a stockholders' meeting of the date of the second Tuesday in January, 1885; and also offers in evidence pages 41, 42, 43, 47, 50, 51, 52, 53, 54, 55, and on page 55, under date of

January 20, 1889, record of certificate signed by W. W. Holmes and A. P. S. Stuart.

Certified copies of said pages and of said record of certificate are hereto attached and made a part hereof, marked respectively Exhibits 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24.

Q. I will ask you if you are acquainted with the handwriting of the persons purporting to have signed this statement or certificate made January 20, 1889, and found on page 55?

A. I am.

Q. Whose signatures are attached?

A. W. W. Holmes and A. P. S. Stuart.

Complainant also offers from this record pages 56, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69.

113 Certified copies of said pages offered by the complainant are hereto attached and made a part hereof, marked respectively Exhibits 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37.

Q. Are you acquainted with the handwriting of what purports to be a record of a meeting, written on one of the letter-heads of the bank, bearing date January 22, 1893, and pinned to page 69 of the record?

A. Yes, sir.

Q. In whose handwriting is the record and by whom is it signed?

A. C. W. Mosher, president of the bank.

Respondent objects to each and every offer made by the complainant of the pages of the book purporting to be, and labelled the record, for the reason that there is no foundation laid for the admission of the same, and for the reason that the same is incompetent and immaterial.

Respondent objects to the offer of the slip pinned in on page 55 of said record, on the ground that the same is incompetent, immaterial, and not properly authenticated and proved.

Respondent objects to all of the pages offered from 56 to 67 for the reason that the same were not authenticated nor attested by the secretary or any other person save the president.

Respondent objects to the pencil memorandum on the report pinned to page 69 for the reason that the same is immaterial and incompetent and there is no proper foundation laid for the introduction of the same, and the same is not authenticated and proved.

Q. As receiver of the bank have you made a schedule of the assets of the bank at the date of suspension?

A. Yes, sir.

Q. You may produce that schedule.

A. I have in my hands the schedule of assets of the bank at suspension.

Q. You may state what the sum total of the assets of the bank at the date of suspension were.

Respondent objects as immaterial and incompetent, as calling for a conclusion and as not the best evidence.

A. There were on hand bills receivable of the bank amounting to $519,600.00, and the books showed a record of other bills receivable not on hand amounting to $141,011.44. There was the sum of $15,385.87 in cash on hand.

114 Q. From what data or books did you make up this statement of assets?

A. The amount of bills receivable on hand is taken from the notes and bills receivable themselves, and the list of the same is handed you herewith.

Q. What does this list show? You may just produce it.

Respondent objects as incompetent and immaterial and not the best evidence.

A. It comprises the list of all the bills receivable on hand in possession of the bank.

Q. And from what do you say this is made up?

A. From the notes and bills themselves.

Q. On hand and in your custody?

A. On hand and in the custody of the receiver, amounting to $519,600.00.

Q. Now is this statement which you have here correct in every respect?

Respondent objects as immaterial and incompetent, and calling for a conclusion of the witness.

A. Yes, sir.

Complainant offers in evidence schedule of the bills receivable of the Capital National bank now in the hands of the receiver, and in possession of the bank at the date of its suspension.

Respondent objects to this offer as incompetent and not the best evidence.

A certified copy of said schedule is hereto attached and made a part hereof, marked Exhibit 38.

Q. Have you made a schedule of bills receivable which the books show and which are not on hand?

A. Yes, sir.

Q. Are these of the date of the suspension of the bank?

A. Yes, sir.

Q. Is this schedule correct?

Respondent objects to the question as incompetent and not the best evidence.

A. Yes, sir.

Q. How did you make the schedule, Mr. Hayden? Make a copy from the books?

A. Why, yes; entries that are made upon these records.

Q. Are they not made in one book?

A. Yes, sir.

115 Q. What is that book?

A. Record of bills receivable.

Q. I will ask you to produce the book showing the bills receivable of the Capital National bank at the date of its suspension, as you have testified, amounting to $141,011.44, but were not on hand.

A. I have the book (producing it).

Q. You may turn to the pages where these entries are. I will ask you to explain a little more fully, Mr. Hayden, how these entries are made upon which you have in your hand, how numerous they are, and how many pages they cover, and whether they are found on any one page or cover a number of pages, and the number of pages.

A. They cover a great many pages and are the bills receivable not being marked paid.

Q. What do you mean by that?

A. Well, that they are shown to be assets of the bank unpaid and uncollected. This book shows a great many items paid and collected, but notes and bills amounting to $141,011.44 have not been paid.

Q. At the date of the suspension of the bank?

A. At the date of the suspension.

Q. What is meant here—what do you mean by bills receivable shown by the books of the bank but not on hand?

A. I mean just that. They are not on hand. The record shows where some of them are and does not show where others are. A small amount of these covered here have been traced and possession obtained of them.

Q. Well, what knowledge have you that the bank owned these?

A. The amount of these notes and bills is included in its bills-receivable account and has been for a great many years.

Q. Well, is the bills-receivable account found in the book which you hold in your hands now?

A. Not the bills-receivable account, but the record of all the bills receivable is shown in this book.

Q. Are any of the bills receivable referred to in this schedule—have any of them been rediscounted?

A. None of them.

Q. Have you any of the original bills receivable covered by this schedule?

A. Yes, sir; I have a number of them.

Q. Why were they not included in the other schedule?

A. Because they were not on hand.

Q. Not on hand at the date of the suspension of the bank, you mean?

A. At the suspension.

Q. Have they been acquired since?

116 A. Yes, sir; some of them.

Complainant offers in evidence schedule of bills receivable amounting to $141,011.44, shown by the books of the bank but not on hand at the date of the suspension.

Respondent objects to this offer as incompetent, having no foun-

dation laid for the admission of the same, and as not the best evidence.

A certified copy of said schedule is hereto attached and made a part hereof, marked Exhibit 39.

Q. Mr. Hayden, have you examined the paper of the bank, and the bills receivable on hand at its suspension, and the bills receivable shown from the books of the bank, and have you investigated the solvency of the makers of those bills receivable, so as to testify and give an opinion as to the value or worthlessness of the paper and bills receivable and assets of the bank at the date of its suspension?

A. Yes, sir.

Q. You may state what, in your opinion, was the good, doubtful, and worthless paper, bills receivable and assets of the bank at the date of its suspension.

Respondent objects to the question as incompetent and calling for a conclusion of the witness, and as immaterial.

A. Of the bills receivable on hand at suspension, amounting to $519,600, I consider the sum of $58,596.82 as good; the sum of $141,391.27 as doubtful, and the sum of $319,611.91 as worthless. Of the bills receivable not on hand at suspension, amounting to $141,011.41, I considered all worthless with the exception of about $10,000.00.

Q. You may state upon what you base your opinion as to the value or lack of value of the bills receivable referred to.

Respondent objects as immaterial and no foundation laid for the same.

A. I base my opinion upon investigation and knowledge of the makers of the paper.

Q. State what amount has been collected upon the bills receivable since the suspension of the bank.

A. Pretty much all the good bills receivable have been collected.

Q. What attempts have been made to collect the doubtful ones?

A. Why, most of them have been sued, where it was thought advisable. Where they have not been sued, there have been demands made and notices sent out.

Q. Has execution been issued upon judgments obtained?

117 A. In some cases, where it was thought anything could be realized.

Q. You (*make*) take up some of the bills receivable, especially some larger amounts that you consider worthless?

Respondent objects as immaterial and incompetent, and having no foundation laid.

A. Among the worthless assets of the bank are notes against W. C. Outcalt who has been sued and judgment rendered for $58,091, and notes of C. W. Mosher which have been sued and judgment obtained for $84,294.48, and notes against Edwin W. Mosher, $97,658.85, which have been sued.

Q. Who is Edwin W. Mosher?

A. A brother of Charles W. Mosher, president of the bank.

Q. Have you investigated the financial standing and solvency of Edwin W. Mosher?

A. Yes, sir.

Q. You may state what in your opinion his solvency is, as ascertained by your investigations.

Respondent objects as incompetent, immaterial and no foundation laid.

A. From the best information I can obtain I consider him insolvent at this time. Now, among the assets which I consider worthless are notes signed Western Manufacturing Company, amounting to $125,000.00.

Q. Upon what facts do you base your opinion as to the insolvency of the makers of those notes?

A. My inability to collect a dollar of them.

Q. Well, is there any other reason?

A. Why the notes are executed by E. Hurlbut, Jr., in the name of the Western Manufacturing Company.

Q. Do you know whether there was such a company as the Western Manufacturing Company, of which E. Hurlbut, Jr., was manager? And if so, who composed that company, and state whether it had any property or assets so far as you have been able to learn?

A. So far as I have been able to learn the company which Hurlbut purported to be manager of had no property or assets of any kind, or business. There is an incorporated company here under the name of the Western Manufacturing Co., but they disclaim any connection with these notes.

Respondent moves to strike out the voluntary statement of the witness as to what the Western Manufacturing Company say in regard to these notes.

A. Who is manager of the Western Manufacturing Company you last referred to?

118 A. M. D. Welch is the secretary and treasurer.

Q. Were those notes executed by that company?

Respondent objects as not the best evidence and as incompetent and immaterial.

A. No, sir.

Q. Now are there any other of those bills receivable?

A. Yes, a note of F. A. Falkenburg for $2,041, I consider worthless; also note of M. C. Frank, $2,120, I consider worthless; also note of O. O. Heffner, $1,300.00 and note of C. W. Marsh, $3,600.00.

Q. What relation were the Marshes to the Moshers if you know whether they were any relation?

Respondent objects to the question as immaterial and incompetent.

A. I understand Mr. Marsh was Mr. Mosher's uncle. Also note of the Marsh Binder Manufacturing Company $9,000.00, I consider worthless; also note of Sycamore Marsh Harvester Company $4,500.00 I consider worthless; also note of W. A. Sharrar, $7,103,76; a note of C. E. Funk, $7,289.10, I consider worthless; also note of John M. Thayer, $2,228.43, I consider worthless.

Q. How do you know this note of John M. Thayer is worthless?

A. I asked him to pay it and he told me that he could not raise a dollar in the world, and that he could not pay it possibly. That he had no property to pay it out of.

Q. Have you made demands of these various persons, and if so, how frequently, for the payment of these bills receivable?

A. I have, except the larger part of the names I have mentioned have no existence. Of the $141,011.44 bills receivable not on hand but counted by the bank, notes amounting to $2,461.91 matured as long ago as 1886, and were unsecured, no interest being paid thereon. Notes amounting to 7,827.35 matured in 1887; notes amounting to $7,866.18 matured in 1888; notes amounting to $9,234.49 matured in 1889; notes amounting to $10,630.34 matured in 1890; notes amounting to $40,600.91 matured in 1891; notes amounting to $27,452.93 matured in 1892.

Q. You may state what amount of bills receivable of the bank have been (rediscounted) and indorsed by the bank and are outstanding, or the date of the suspension of the bank.

A. At that date notes were outstanding to the amount of $331,359.86. Of these notes all have been collected by the holders thereof except $143,139.30.

Q. You may state what the bank's liability is on that indorsed paper.

119 Respondent objects as calling for a conclusion, incompetent, and immaterial.

A. A very small amount of that paper amounting to $143,139.30 is good.

Q. State what the total liabilities of the bank were at the date of of its suspension.

Respondent objects as immaterial and no foundation laid.

A. At suspension the liabilites of the bank amounted to $1,463,013.17.

Q. What amount of those liabilities have been allowed by the receiver?

A. The claims allowed amount to $849,109.37.

Q. What is the amount of the claims not allowed?

Respondent objects as incompetent and no foundation laid.

A. $613,903.70.

Q. What amount of the claims not allowed has suit been commenced upon against you as receiver?

A. Suits have been commenced against the bank, and me as

receiver, on account of the bank's indorsement on notes amounting to $140,629.80.

Q. State, if you can, any large claim upon which suit has been commenced?

Respondent objects as immaterial and incompetent.

A. The claim of the treasurer of the State of Nebraska, which amounts to $236,361.83.

Q. What is the nature of that claim?

Respondent objects as immaterial and incompetent.

A. Why, the amount is shown due the State treasurer by a pass book in which the credit is shown, issued by the bank.

Q. For deposit?

A. Yes, sir; for deposit.

Q. State for what amount the receiver has allowed claims for certificates of deposit.

A. 356,149.49.

Q. What do the bank's books show due on certificates of deposit?

A. $86,265.70.

Q. How do you find out, or how do you know that the certificates outstanding exceed those on the book account?

A. By the certificates themselves being presented as claims authenticated and allowed.

Q. Do you know of any other certificates of deposit outstanding that do not appear upon the books of the bank and which you have not allowed as claims?

120 A. Yes; I know of one certificate amounting to $150,000.00 issued to J. E. Hill, treasurer, and turned over by him to J. S. Bartley, treasurer, and deposited in the bank by J. S. Bartley, treasurer, but which was never cancelled by the bank nor placed to Bartley's credit on the books of the bank, but entered in Bartley's bank book.

Q. You may state how the books were kept—you may state whether the books were manipulated.

A. The ac-ounts and the books were manipulated; for instance, the president of the bank, Mr. Mosher, would draw the stub of the certificate for a small sum and issue the certificate for a larger amount.

Q. Well, you may give an instance or instances where that was done.

A. The certificate of deposit register shows that No. 25097 was issued for $50.00 in the name of "collections" on August 17, 1891, while the certificate itself calls for $50,000.

Q. I will ask you in what book do you find this entry of $50.00?

A. In the certificate of deposit register.

Q. You have that certificate of deposit register here, have you?

A. Yes, sir.

Complainant offers in evidence from the book entitled Babbitt's certificate of deposit register, of the date of August 17, 1891, No. 25097 as entered in said book.

A copy of said entry is hereto attached and made a part hereof, marked Exhibit 40.

Q. Have you the certificate No. 25097?
A. Yes, sir (producing it).

Complainant offers in evidence certificate of deposit No. 25097 issued to J. E. Hill, treasurer, for $50,000, and asks the notary to make a copy of the same and attach to this deposition.

A certified copy of said certificate is hereto attached and made a part hereof, marked Exhibit 41.

It is agreed by and between the parties complainant and respondent herein, that certified copies of all exhibits may be attached to this testimony in place of the originals except that the original stock certificates shall be introduced and attached, such certified copies to be subject to objections heretofore and hereafter interposed.

Q. Now, are there any other certificates of deposit which the register shows?

121 A. The certificate of deposit register shows that certificate No. 25047 was issued for $975, in the name of "collections." The certificate itself calls for $37,975, issued to J. E. Hill, treasurer.

Complainant offers in evidence the entry in certificate of deposit register opposite No. 25047, and also offers the certificate of deposit itself, numbered 25047 issued to J. E. Hill, August 5, 1891, for $37,975.

Certified copies of said entry and of said certificate are hereto attached and made a part hereof, marked Exhibit 42.

A. (continued). The certificate of deposit register shows that certificate No. 24986 was issued to H. R. Krug for $1,000. The certificate itself calls for $7,000.

Complainant offers in evidence entry in the certificate of deposit register opposite No. 24986, and also certificate of that number, dated July 27, 1891, and payable to H. R. Krug.

Certified copies of said entry and of said certificate are hereto attached and made a part hereof, marked Exhibit 43.

A. (continued). The certificate of deposit register shows certificate No. 24981 was issued to A. P. S. Stuart for $20. The certificate itself calls for $2,000.00.

Complainant offers in evidence the entry in the certificate of deposit register opposite No. 24981, and also the certificate of deposit testified to by the witness, of the same number, dated July 27, 1891, payable to A. P. S. Stuart.

Certified copies of said entry and of said certificate are hereto attached and made a part hereof, marked Exhibit 44.

A. (continued). The certificate of deposit register shows that certificate No. 24941 was issued in the name of collections for $5,000.00. The certificate itself calls for $10,000.00.

Complainant offers in evidence the entry in the certificate of de-

posit register opposite No. 24941 and also the certificate of deposit of that number, payable to J. E. Hill, treasurer, for $10,000, dated July 20, 1891.

Certified copies of said entry and of said certificate are hereto attached and made a part hereof, marked Exhibit 45.

A. (continued). The certificate of deposit register shows certificate No. 25636 issued in the name of collections for $100. The certificate itself calls for $50,000.

122 Complainant offers in evidence entry in the certificate of deposit register opposite No. 25636, and also the certificate of that number, dated November 18, 1891, to J. E. Hill, treasurer.

Certified copies of said entry and of said certificate are hereto attached and made a part hereof, marked Exhibit 46.

Q. Mr. Hayden, have you examined the books of the bank to see whether or not any bad debts were charged off prior to February 2, 1892?

A. Yes, sir; I have.

Q. You may state whether there are any bad debts charged off during that period prior to February 2, 1892.

A. No, sir; none at all.

Q. Now you may state whether there were any bad debts during that period of time.

Respondent objects as calling for a conclusion of the witness, and incompetent.

A. Yes, sir.

Q. If there were any bad debts or losses prior to that time, state what they were.

Respondent objects as calling for a conclusion and as incompetent.

A. There was a loss by the failure of Donnell, Lawson and Simpson, bankers, New York city, $30,300.00.

Q. What date was that?

A. Dec. 28, 1885, $20,300 was charged to the account of the Chemical National bank, New York city; March 2, 1886, $5,000 was charged to the same bank; March 3, 1886, $5,300 was charged to the same bank; and three notes, numbered 90356, $10,200, were marked paid to offset these debits to the Chemical National bank.

Q. What was the basis of these charges against the Chemical National bank, if any?

Respondent objects as incompetent.

A. The charge against the account of the Chemical National bank was made to eliminate from the assets of the bank the notes of Donnell, Lawson & Simpson, which were of no value. There was no basis for the charge against the Chemical National bank. The Chemical National bank never credited any such amounts or sums to the Capital National bank.

Q. You may state whether or not these charges made against the Chemical National bank were true entries, and based upon some real item, or whether they were simply to cover up these losses.

123 Respondent objects as calling for a conclusion and as incompetent and leading.

A. They were simply made to cover up these losses.

Q. Now you say these charges against the account of the Chemical National bank seem to be based upon certain notes that were paid, which you have numbered. Were these notes in fact paid?

A. No, sir; they were just credited and the bills receivable account of the bank reduced that amount, and the amount due from the Chemical National bank increased upon the books of the Capital National bank.

Q. Are there any other losses? If so, state them,

A. Yes, sir; on May 21, 1892, the books of the Capital National bank show stocks and bonds as an asset to the amount of $46,103.61, and it is evident that the bank owned no stocks and bonds at that time.

Respondent moves to strike out the last answer of the witness as not responsive to the question, no foundation laid for its admission, and as incompetent.

Q. What do you mean when you say it is evident, in your last answer?

Respondent objects as having no foundation laid for its admission and as incompetent.

A. On the 15th day of June, 1892, this account—stocks & bonds—was eliminated as an asset by the warrant account being charged with $44,000 and the real estate account being charged with $2,103.61. This warrant account received a credit of $44,000 on May 21st, 1892, and the certificate account was charged with $50,000 by certificate No. 25636 being charged against it. This certificate was issued November 18, 1891, and the rediscount account was charged with the amount, $50,000, no funds being placed in the bank at the time this certificate was issued and the charge to the rediscount account being fictitious and false.

Q. In other words, Mr. Hayden, was that certificate issued to J. E. Hill?

A. Yes; the certificate was issued in the name of J. E. Hill, and the name of J. E. Hill was indorsed on the back of the certificate by Charles W. Mosher when it was charged to the certificate account.

Q. Have you that certificate?

A. Yes, sir.

Q. What amount does the certificate register show this certificate issued for?

Respondent objects as not the best evidence and as incompetent.

A. $100.00.

Q. Is this the certificate of deposit (showing witness certificate)?

A. Yes, sir.

Q. By whom was it signed?

Respondent objects as not the best evidence and as incompetent.

A. C. W. Mosher, president.

Q. And in whose handwriting is the certificate drawn up, if you know?

A. C. W. Mosher.

Q. An- whose name is indorsed on the back of it?

Respondent objects as not the best evidence and as incompetent.

A. J. E. Hill, treasurer.

Q. Are you acquainted with his signature—his handwriting?

A. Mr. Hill's?

Q. Yes.

A. Yes, sir; I am.

Q. Is this his handwriting?

A. No, sir.

Q. Whose handwriting is it?

A. C. W. Mosher.

Q. Will you produce the certificate register to show the entry of $100?

A. Yes, sir.

Q. Please produce it.

Witness produces register and shows entry as requested by counsel.

Q. Are there any losses, Mr. Hayden?

Respondent objects as incompetent and calling for a conclusion.

A. Yes, sir.

Q. You may state what they were.

A. July 2, 1883, the amount of $10,000 was deducted from the overdrawn collection account, and the same amount added to the amount due from the Omaha National bank.

Q. What did that show?

Respondent objects as calling for a conclusion and as incompetent.

A. It shows that the overdrawn collection account was a loss, and the loss was covered by charging the Omaha National
125 bank with $10,000, and there was no basis for making this charge except to cover up the $10,000 loss.

Q. Were there any other losses?

Respondent objects as calling for a conclusion, and as incompetent.

A. On December 14, 1885, the bills of exchange account was charged with $29,968.00 and the following notes were marked paid, and credited to the bills-receivable account.

No.	Name.	Amount.
10418.	Marsh Harvester Co.	$4,868 00
10461.	Marsh Binder Co.	5,000 00
10475.	Marsh Binder Co.	2,500 00
10502.	Marsh Binder Co.	2,500 00
10511.	Marsh Binder Co.	5,000 00
10519.	C. W. and W. W. Marsh	3,600 00
10525.	Sycamore Marsh Harvester Co.	2,000 00
10527.	Sycamore Marsh Harvester Co.	2,000 00
10529.	Marsh	2,500 00

making a total of $29,968.00.

Q. What do you know about those notes?

A. The notes were worthless—of no value.

Respondent objects to the answer as not responsive, immaterial, incompetent, and no foundation laid.

Q. How do you know that, Mr. Hayden?

Respondent objects as incompetent, immaterial.

A. From investigation, and the fact that all the makers of the notes are notoriously insolvent.

Respondent moves to strike out the answer of the witness to the last question, as incompetent and hearsay.

Q. Now, Mr. Hayden, are there any other losses? You may state in a general way whether there are any other losses or bad debts?

Respondent objects as incompetent, and calling for an opinion of the witness.

A. Yes, sir; the interest-paid account was $108,916.44 more than shown by the books.

Q. Describe or define the interest-paid account.

A. The interest-paid account represents the amount of interest paid by the bank or deposits, and for rediscounting its paper. At various dates this account was given credits in various sums, by the making of false entries or charges to other accounts, thereby showing it to be less than it really was.

126 Q. Now, have you a tabulated statement of the dates and amounts here?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Is that taken from the interest-paid account?

A. Yes, sir.

Q. Have you the book known as the interest-paid account?

A. Yes, sir.

Q. You may turn to what you think the first false entry on the interest-paid account.

Respondent objects to the question as assuming a state of facts not shown to exist, incompetent, no foundation laid, and leading.

A. This shows a credit December 29, 1884, of $813.00.

Complainant now offers in evidence the last line on page six, 6, of the interest-paid account; copy of which is hereto attached marked Exhibit 47.

To this the respondent objects as incompetent, and having no foundation laid for the same.

Complainant now offers on page 55 of the book called the interest-paid account the last line on that page; copy of which is hereto attached marked Exhibit 48.

Respondent objects to this offer as incompetent, and no foundation being laid for the same.

Complainant offers on page 58 of said interest-paid account the last line, June 9th, $1,500; a copy of which is hereto attached marked Exhibit 49.

Respondent objects as having no foundation laid, immaterial, and incompetent.

Complainant offers on page 65 of said interest-paid account the line opposite the date, November 16, interest-paid account in red ink, credit error of $2,500.00; copy of which is hereto attached marked Exhibit 50.

Respondent objects as having no foundation laid, immaterial and incompetent.

Complainant offers, on page 78, of the same book, the item opposite June 28, "paid warrants $10,000;" a copy of which is hereto attached marked Exhibit 51.

Respondent objects to the same as having no foundation laid, and as incompetent and immaterial.

127 Complainant offers on page 83 of the same book the line opposite Sept. 30, 1889, "paid costs on real estate $7,000.00;" copy of which is hereto attached marked Exhibit 52.

Respondent objects as having no foundation laid, incompetent, and immaterial.

Complainant offers on page 95 of the same book the line opposite March 19th, credit $5,000; copy of which is hereto attached marked Exhibit 53.

Complainant offers on page 98 of said book the line opposite May 16, 1890, credit on N. Y. $1,500; copy of which is hereto attached marked Exhibit 54.

Respondent objects as having no foundation laid, incompetent, and immaterial.

Complainant offers on page 99 of the same book the line opposite June 3, 1890, credit real estate $2,500.00; copy of which is hereto attached marked Exhibit 57.

Respondent objects as having no foundation laid, incompetent, and immaterial.

Complainant offers on page 98 of the same book line opposite May 19, 1890, credit Chic. $2,000; copy of which is hereto attached marked Exhibit 55.

Respondent objects as having no foundation laid, incompetent, and immaterial.

Complainant offers on page 98 of the same book line opposite May 21, 1890, credit N. Y. $1,500.00; copy of which is hereto at-ached marked Exhibit 56.

Respondent objects as no foundation being laid, incompetent, and immaterial.

Complainant offers on page 108 of the same book line opposite Sep. 25, credit by real estate account, $5,000.00; copy of which is hereto attached marked Exhibit 58.

Respondent objects as having no foundation laid, incompetent, and immaterial.

Complainant offers on page 115 of the same book line opposite Dec. 27, "$10,000, cr. S. & B. account;" copy of which is hereto attached marked Exhibit 59.

Respondent objects as having no foundation laid, incompetent, and immaterial.

Complainant offers on page 125 of same book line opposite $800 cr. prison contract; copy of which is hereto attached marked Exhibit 60.

128 Respondent objects as having no foundation laid, incompetent, and immaterial.

Complainant offers on page 127 of the same book line opposite 7,200, with just the word "cr.;" copy of which is hereto attached marked Exhibit 61.

Respondent objects as having no foundation laid, incompetent, and immaterial.

Complainant offers on page 131 of same book line opposite $10,000 in red ink cr. under date of June 20th; copy of which is hereto annexed marked Exhibit 62.

Respondent objects as having no foundation laid, incompetent, and immaterial.

Complainant offers on page 140 of same book line opposite $14,000, the word "cr.;" copy of which is hereto attached marked Exhibit 63.

Respondent objects as having no foundation laid, incompetent, and immaterial.

Complainant offers on page 151 of same book line in red opposite February 2nd, "balance $2,103.44;" copy (*copy*) of which is hereto attached marked Exhibit 64.

Respondent objects as having no foundation laid, incompetent, and immaterial.

Complainant offers on page 158 of same book line opposite $5,000, with words cr. by — York; copy of which is hereto attached marked Exhibit 65.

Respondent objects as having no foundation laid, incompetent, and immaterial.

Q. What is the effect and meaning of these entries?

Respondent objects as having no foundation laid, incompetent, and calling for a conclusion.

A. The effect of these entries was to make the interest-paid account

appear less than it was and to make the apparent profits of the bank more than they were and to make dividends.

Q. How do you know that these are not *bona fide* credits?

A. From the fact that the interest-paid account can only be offset or credited by profit and loss.

Q. How do you know, for instance, that that last credit was not a (*a*) valid *bona fide* credit?

A. The interest-paid account can only receive debits, as it shows the amount paid out by the bank, and when we figure up
129 the undivided earnings the interest-paid account is deducted from the interest received.

Q. Do these items which you have just given here indicate interest paid out by the bank on deposits and rediscounts or do they indicate interest paid to the bank on its bills receivable?

A. It does not indicate interest received by the bank; all interest received by the bank is credited to the interest account and not to the interest-paid account.

Q. Then these items here, if *bona fide*, would indicate that the bank had paid out that money itself to depositors or on rediscounts?

A. No, it would indicate that the bank had received that amount.

Q. Mr. Hayden, when the interest-paid account is debited that means that the bank had paid out the amount of that debit?

A. Yes, sir.

Q. And when the account is credited it means that the bank has received that much?

A. Yes, sir.

Q. And the bank has been credited to that amount?

A. Yes, sir.

Q. Now, have you a tabulated statement of these items which we have just given to the notary from the interest-paid account?

A. Yes, sir.

Q. Is that a correct statement taken from the books and covering all the items which we have given to the notary?

A. Yes, sir.

Complainant offers in evidence the tabulated statement of the items above introduced from the interest-paid account.

Respondent object- to this offer for the reason that there is no foundation laid for the same, and that it is incompetent and immaterial.

The statement offered is hereto attached marked Exhibit 66.

Q. Now, Mr. Hayden, do you know that the bank did not receive the money represented by these credits in the interest-paid account?

A. Because I find to offset these credits, debits to other accounts in a large number of the cases but not in all. In the cases where I do not find these debits, I am unable to tell what account or what entry was made to balance the credit.

130 Q. Mr. Hayden, as a book-keeper and from your general knowledge do you feel competent to state from an examination of these items, whether they were made at the time the other items in the book were made, or whether they were made subsequently?

A. They were made at or before the dates in the interest-paid account. The interest-paid account book shows that they were generally deducted from the amount of interest paid.

Q. Make an explanation as to how this account is made up.

A. The interest-paid account is intended only, and should only have debit entries to it, showing the amounts of interest paid by the bank.

Q. And where are these credits usually made, at the end of the footing or after the footings?

A. They are usually made at a convenient place for deducting the amount from the total of interest paid at the time the entry is made.

Q. Is there any other item of loss, Mr. Hayden, or steals, as exhibited by the books of the bank?

A. Yes, sir, I will mention one, an entry on December 24th, 1889, of $100,000 credit being added to the account of the State treasurer, J. E. Hill.

Q. What book is this, Mr. Hayden, (handing witness book)?

A. The individual balance book.

Q. What items are entered in the individual balance book?

A. Checks and deposits of all persons keeping accounts in the bank are represented by this book.

Q. Does this book show an account kept by the State treasurer with the bank?

A. It does.

Q. You may turn to Tuesday, December 24th, 1889, and state what was the balance on that day. State what the items are and what was his balance and what the credit was to his account that day.

Respondent objects to this as having no foundation laid, incompetent and immaterial.

A. The State treasurer had credits that date, $23,328.75 and another for $100,000.00; the entry of $100,000.00 threw the books out of balance to that extent.

Q. To the extent of $100,000.00?

A. Yes, sir.

Complainant now offers in evidence the line in the book identified as the individual balance book opposite the State treasurer, on December 24th, 1889.

131 Respondent objects as having no foundation laid and as incompetent.

A copy of the said entry is hereto attached, marked Exhibit 67.

Q. Mr. Hayden, what became of that $100,000.00, and how long was it carried that way upon the books?

A. It was carried until December 28, 1892. On that date C. W. Mosher put his notes into the bank, amounting to $40,833.34, and C. R. Outcalt put his notes into the bank, amounting to $29,166.66, and the check of Mosher & Outcalt was also put into the bank for

$30,000.00, making $100,000.00, and the false entry of December 24, 1889, was thereby accounted for.

Q. Did Mosher & Outcalt or either of them have any money to their credit at that time?

Respondent objects as not the best evidence and incompetent.

A. Yes, sir; on December 24, 1892, Mosher & Outcalt put their notes into the bank to the amount of $30,000.00 and credited the account of Mosher & Outcalt.

Q. What became of those notes, Mr. Hayden?

A. They are in the hands of the receiver of the Capital National bank as a part of the assets of said bank.

Q. Have they been paid, or either of them?

Respondent objects as not the best evidence, incompetent, and immaterial under the issue of this case.

A. No, sir.

Q. Have you made investigations as to their solvency or insolvency so as to be able to testify whether they are solvent or insolvent?

A. I have.

Respondent objects to the last question and answer for the reason that no foundation has been laid for the same and as incompetent and immaterial.

Q. You may state whether judgments are obtained against them.

A. Yes, sir; against both of them.

Q. Execution issued?

A. Yes, sir.

Q. Any property found?

Respondent objects as not the best evidence, incompetent, and immaterial.

A. No, sir.

132 Q. And you may state whether they are solvent or insolvent.

Respondent objects, as calling for a conclusion, incompetent, and immaterial.

A. They are insolvent.

Q. Are there any losses?

A. Yes, sir; April 25, 1891, the certificate of deposit account book was charged with $100,000.00 and a certificate was issued in the name of J. E. Hill, treasurer, for $100,250.00.

Q. What has become of that certificate?

A. The certificate was (canceled) April 28, 1891, and charged to the certificate account, and another certificate *account, and another certificate* issued for $75,000.00; April 30th, this certificate was cancelled and charged to the certificate account, and another certificate issued for $62,500.00; May 2, this certificate was cancelled and charged to the certificate account and another issued for $52,500.00; May 5th, this certificate was cancelled and charged to the certificate

of deposit account and another issued for $12,500.00; May 14th, this was cancelled and charged to the certificate account and another issued for $7,500.00; May 16, this certificate was cancelled and charged to the certificate ac-ount.

Q. What do these different items or entries in the book mean or indicate?

A. The amount was used by Mr. C. W. Mosher for his own use and benefit.

Q. What does the total amount to?

A. $100,250.00.

Q. Were those items ever made good to the bank?

A. No, sir.

Q. Mr. Hayden, you may state whether or not the surplus fund of the bank was charged off; and, if so, when and in what manner.

A. On February 2, 1892, $30,000.00 of the surplus was charged off, and bad debts to the amount of $21,402.46 were also charged off. Also at that time the difference between the $21,402.46 and the $30,000.00 was used to reduce the premium account, stocks and the bonds account, taxes account, wages account and interest-paid account.

Q. Have you a tabulated statement of the surplus that was charged off, and all the items used?

A. Yes, sir; I have.

Complainant offers in evidence the tabulated statement of the same, identified by the witness.

Respondent objects as no foundation has been laid, and as incompetent.

133 Said tabulated statement is attached to this deposition, and made a part hereof, marked Exhibit 68.

Q. Is that a correct statement?

A. Yes, sir; it is.

Q. Taken from the books of the bank?

A. Yes, sir.

Q. Mr. Hayden, you may state the sum total of notes discounted by the bank of the Western Manufacturing Co., signed and supposed to be signed by E. Hurlbut, Jr., manager of that company?

A. The books of the bank show notes of the Western Manufacturing Company to the amount of $755,000.00 that were discounted from July 25, 1888, to Jan. 21, 1893, inclusive.

Q. What became of those notes?

A. Notes to the amount of $110,000.00 were rediscounted by the Capital National bank with other banks, and the Capital National bank now hold- in the hands of the receiver, notes to the amount of $125,000.00.

Q. Making altogether how much?

A. $235,000.00 unpaid.

Q. What became of the other notes—the original notes?

A. Aside from the $235,00-.00?

Q. Yes.

A. Why, the books show the notes to have been paid, and I have no means of knowing what became of the notes.

Q. Have you a tabulated statement of these notes, taken from the books of the bank, with their dates and when they were paid?

A. Yes, sir.

Q. Is that a correct statement taken from the books of the bank?

A. Yes, sir.

Complainant now offers in evidence the statement showing list of these notes, with dates and when paid.

Respondent objects to this offer as incompetent and immaterial, and no foundation having been laid.

A copy of said tabulated statement is hereto attached and made a part of this deposition marked Exhibit 69.

Q. Who signed these notes, Mr. Hayden, so far as you know?

Respondent objects as not the best evidence, and as incompetent.

A. E. Hurlbut, Jr., manager.

134 Q. Who is E. Hurlbut, Junior?

Respondent objects as immaterial.

A. He was — person living in Lincoln, and in the employ of C. W. Mosher.

Q. Well, was there any such business for several years prior to the failure of the bank, as the Western Manufacturing Co., of which E. Hurlbut was manager?

Respondent objects as incompetent and having no foundation laid.

A. Not as far as I have been able to ascertain.

Q. And have you endeavored to find out, and learn, whether there was such a company?

A. Yes, sir.

(*A.*) And what is your best information and knowledge about it?

A. That there is no such company or concern.

Q. And that there was none at the time those notes were executed?

A. Yes.

Q. Now have you examined the account of the Western Manufacturing Company with E. Hurlbut, manager?

A. Yes, sir.

Q. Were the proceeds of those notes that were discounted passed to his credit or to the credit of the Western Manufacturing Company?

A. Yes, sir; I have only been able to find the proceeds of a few of the notes placed to the credit of the company.

Q. How many of these Western Manufacturing Company notes were put in during the last year?

A. $200,000.00 during the year 1892, and $25,000.00 during the month of January, 1893.

Q. Mr. Hayden, you may state whether or not, from your in-

vestigations, you are able to say whether their Western Manufacturing Company was a real company, or whether it was simply a fictitious company used by Mosher to cover up his stealings?

A. Mosher operated business at the State penitentiary under his name some nine or ten years ago, but about that time he sold the business to another concern, and since then, so far as I have been able to learn, the only business that the company had was in placing these notes.

Q. Was the Western Manufacturing Company that signed these notes by E. Hurlbut, Jr., manager, was it a corporation at all?

A. It was not a corporation.

135 Q. Mr. Hayden, you may state whether or not the books show that the directors returned dividends and paid dividends to the stockholders when the books of the bank showed that there were losses and were no earnings.

A. They did.

Q. Are you able to take up the books of the bank for the different years and point out the amount of losses and the amount of earnings, and have you made any statement to that effect? Have you made up any tabulated statement, so as to be able to testify accurately upon that amount?

A. The amount that I have already stated as being placed to the credit of the interest-paid account show losses to the extent of the credit so placed, and the paper I have testified to as being bad paper so shown by the books.

Q. You may state whether or not these other items which you testified to, where the $100,000.00 was dropped out of the balance, whether that would show a loss or not?

A. That entry would have shown a liability for $100,000.00 more than the bank had apparent assets to cover.

Q. Now, Mr. Hayden, have you in your possession the original statements that were made from time to time by the cashier and directors of the bank to the Comptroller of the Currency?

Respondent objects as leading, calling for a conclusion, and incompetent.

A. I have the office copies retained by the bank of the reports sent to the comptroller.

Q. Will you produce those?

A. Yes, sir.

Q. Where are the original reports?

A. In the hands of the Comptroller of the Currency.

Q. At Washington?

A. Yes, sir.

Q. All of these reports and papers which I have handed you, you received from the Comptroller of the Currency?

A. Yes, sir.

Q. To be used in other matters?

A. Yes, sir.

Q. And they are part of the records of the comptroller's office, are they?

A. Yes, sir.

Q. And your directions are as soon as you are through with them to return them to him?

A. Yes, sir.

Q. And you are not at liberty to allow the originals to go in evidence?

A. No, sir.

136 Q. Are you willing copies of the same shall be taken and attached to your deposition?

A. Yes, sir.

Q. What was the amount of overdrafts on the bank at the date of its suspension?

Respondent objects as not the best evidence.

A. $33,767.20.

Q. Can you give the amount of overdrafts at the date December 16, 1892?

A. Yes, sir.

Respondent objects as not the best evidence.

Q. What were they?

A. $15,023.85.

Q. When were the stocks transferred on the books of the bank?

A. January 3, 1893.

Q. What was the amount of the overdrafts on January 3rd?

A. $14,188.54.

Q. Now, Mr. Hayden, are you willing to produce all of these books from which statements have been made and from which you have testified and furnished data for the use of counsel for the respondent, and to open them to their inspection for their use on this trial?

A. Yes, sir.

Q. What was the amount of overdue paper of all kinds in the Capital National bank on the 3rd day of January, 1893?

A. $75,027.98; and the records also showed $106,094.11 overdue paper which should have been on hand, but was not.

Q. What do you mean by that which should have been on hand?

A. Well, just exactly that.

Q. Does this include overdue paper that had been rediscounted by the bank?

A. There was none overdue that had been rediscounted.

Q. Mr. Hayden, can you state whether there was any difference between the amount of the bills receivable as shown by the books and the amount actually turned over to the receiver; if so, state what the difference was.

A. Yes, sir; the amount of bills receivable turned over to the receiver was $332,280.07 less than the amount shown to be the bills receivable of the Capital National bank by its books.

Q. Do you know whether there was any difference between the

amount of certificates actually issued by the bank for moneys deposited and the amount of certificates as shown by the books of the bank?

137 Respondent objects as leading, incompetent, assuming facts of which there is no proof and no foundation laid.

A. Certificates of deposits have been presented to the receiver for an allowance of receiver's certificates to the amount of $511,149. The books of the bank showed certificates outstanding to the amount of $97,301.27.

Q. What is the difference?

Respondent objects as calling for a conclusion and incompetent.

A. $413,484.22.

Cross-examination.

By C. C. FLANSBURG:

Q. Mr. Hayden, how long have you been in the banking business?

A. About twenty-three years.

Q. I believe you testified upon your direct examination that you considered yourself an expert accountant?

A. Yes, sir.

Q. When were you appointed receiver of this bank?

A. In May, 1893.

Q. And when did you enter upon your duties as such receiver?

A. June 1, 1893.

Q. How long after you entered upon the duties of receiver before you discovered the various items, differences, shortages, mutilations, alterations and manipulations to which you have testified, as shown by the books, records, and investigations?

A. I have been looking the matters up from time to time from the time I was appointed and took charge until the present time.

Q. Now will you take the stock certificate book and tell me in whose handwriting are the certificates numbered 153, 154, and 155, dated January 3, 1893, to Gruetter & Joers, each for fifty shares of stock of the Capital National bank?

A. I am unable to say in whose handwriting the stubs are made up for 153 and 154, but the stub of 155 is made up in the handwriting of C. W. Mosher.

Q. And what relation did he sustain to that institution at that time?

A. He was president and director of the Capital National bank at that time.

Q. Now, take your stock ledger, Mr. Hayden. Will you turn to page 753 and tell we whose account you find on that page?

A. That of A. P. S. Stuart.

138 Q. And in whose handwriting are these entries, do you know?

A. Yes, sir.
Q. State whose they are.
A. I believe the entries are made in the handwriting of S. K. Hale.
Q. What position did he occupy with reference to this corporation?
A. He was book-keeper in the Capital National bank.
Q. Please turn to page 799 of the same record, Mr. Hayden?
A. I have it.
Q. Whose account do you find there?
A. Gruetter & Joers.
Q. Do you know in whose handwriting those entries appear?
A. I think I do.
Q. State whose.
A. Charles W. Mosher.
Q. I will ask you if you know whether the entries in that book are correct?
A. So far as relates to those certificates of stock.
Q. These particular entries so far as relates to these certificates of stock?
A. Yes, sir; I believe they are.
Q. You say that you mailed a notice of the call for the assessment upon the shares of stock to A. P. S. Stuart and Gruetter & Joers, both?
A. I do not think I said so. I would have to look and see.
Q. Did you mail a notice of the call for those assessments as made by the comptroller to Gruetter & Joers at the time you allege you sent the notice to Professor Stuart?
A. Yes, sir; I did.
Q. How was that notice sent?
A. By registered mail.
Q. Did you receive back a registry receipt at that time?
A. Yes, sir.
Q. Have you that?
A. Yes, sir.
Q. Will you produce it?

Respondent offers in evidence the registry receipt produced and identified by the witness, and asks the notary to attach the same to this deposition and make it a part hereof.

Complainant objects as not proper cross-examination, incompetent, and immaterial.

Said registry receipt is hereto attached, marked Exhibit 75.

Q. Now, take the record book of the bank, Mr. Hayden. What does this book purport to show?
139 A. The minutes of the meetings held by the directors and stockholders of the Capital National bank from time to time.
Q. Do you know when these entries were made; the entries in this book?
A. Well, I presume at the time when the dates——
Q. I asked you if you know.

A. No, sir.

Q. I believe you introduced pages 36 and 37 under date of May, 1884. I will ask you in whose handwriting that is?

A. I do not know in whose handwriting the minutes are made, I only know the signatures attached of the president and secretary.

Q. I will ask you if the name of the defendant Ambrose P. S. Stuart appears signed to that in any place of those pages?

A. Not signed to it.

Q. Turn to page 40 under date of January, 1885. Do you know in whose handwriting that is?

A. Not the minutes, only the signatures of the president and cashier.

Q. I will ask you if the name Ambrose P. S. Stuart appears signed to those minutes?

Complainant objects for the reason that the minutes show for themselves.

A. No, sir.

Q. Turn to pages 41, 42, 43, 47, 50, 51, 52, 53, 54.

A. Yes, sir.

Q. Would your answers be the same to all of these?

A. Yes, sir.

Q. Will you turn to page 55, Mr. Hayden?

A. Yes, sir.

Q. I will ask you if you know in whose handwriting those minutes are?

A. Yes, sir; I do.

Q. Whose handwriting is that?

A. C. W. Mosher.

Q. Is that record itself signed by the defendant Ambrose P. S. Stuart?

A. The record of the meeting is not signed by A. P. S. Stuart.

Q. The only signature of A. P. S. Stuart is to a report pinned or pasted in there, is it not?

A. Yes, sir; under date of January 20, 1889.

Q. Do you know who put that in or when it was put in?

A. No, sir.

Q. Pages 56, 57, 59, 60, 61, 62, 63, 64, 65, 66 and 67; do you know in whose handwriting those pages are?

140 A. Yes, sir; the handwriting of C. W. Mosher.

Q. Are those signed by any one else than C. W. Mosher—attested by any one?

A. Page 56 is signed by R. C. Outcalt, cashier; the other pages are only signed by C. W. Mosher, president.

Q. Do you know when those were entered there?

A. No, sir.

Q. On pages 69, January 22, 1893, is there any entry of record on that page?

A. None except the record pinned to the page by a pin.

Q. That is not signed by the defendant?

A. No, sir.

Q. You do not know as a matter of fact whether he h-d any notice of any of those transactions related or recited in that record?

A. Yes, sir; I know that he had notice of his election as director.

Q. You knew that?

A. Yes, sir.

Q. Of your own personal knowledge?

A. Yes, sir; in this way. I have seen his oath as director reported to the Comptroller of the Currency over his signature.

Q. Do you not know, so far as that record shows, whether he had any notice of those facts—do not know of your knowledge, that is, except what you have seen in that report? You say you do not know when those entries were made there?

A. No, sir.

Q. I understood you to say in your direct examination that in that schedule there were bills receivable $519,600.00 or about that?

A. Yes, sir; on hand.

Q. That the records show not on hand bills receivable to the amount of $141,011.44?

A. Yes, sir.

Q. Cash, $15,385.87?

A. Yes, sir.

Q. Now did the records show that these bills receivable $141,000.00 were not on hand—did the records itself show that, the bills-receivable record?

A. The record showed in whose hands they were in some instances, in other instances it was blank as to who held them, but they were not on hand.

Q. Now as to this $141,000.00 that was not on hand in the bank, how much have you been able to get possession of in the bank, or to reduce to cash since you have been receiver?

A. I would have to figure up just how much I have gained possession of. There has been a very small amount of it collected or paid.

141 Q. Do you know whether these bills receivable of the bank were good or bad at that time? I speak with regard to all bills receivable of the bank that came into your hands at the time they were taken.

A. I know that a large amount of them were bad.

Q. At the time they were taken?

A. At the time they were taken; yes, sir.

Q. Now will you specify which ones you know were bad at the time they were taken?

A. Yes, sir; the notes of R. C. Outcalt, amounting to $58,091.00.

Q. When was that taken?

A. They were taken a short time before the bank failed. I can give you the exact time if you would like it—24th and 28th days of December, 1892. E. W. Mosher, $107,085.45.

Q. And the date, please?

A. Well, now, those notes were taken at various dates.

Q. Was this paper (dates) prior to December, 1892?

A. Yes, sir.

Q. Do I understand you to say that at the time these notes were taken E. W. Mosher was not good? Of your own personal knowledge I mean.

A. I am giving you my opinion.

Q. I am asking you if you know at the time of the taking of them that he was not good?

A. I can only give you my judgment.

Q. Well, upon what do you base that judgment?

A. From my knowledge of Mr. Mosher and investigations of (*t*his) worth and his means.

Q. Made at what time?

A. Subsequent to the time of taking the notes by the bank.

Q. You made no investigations or inquiries at about the time these notes were taken?

A. No, sir.

Q. Do you not know what he was reputed to be worth at that time?

A. No, sir.

Q. Well, your next note.

A. C. W. Mosher, $83,333.34.

Q. What amount of this was taken subsequent to December 19, 1892?

A. $68,333.34.

Q. I will ask you if you know whether C. W. Mosher was considered good financially in December, 1893, if that was his general reputation?

A. I think he would have been considered good for a reasonable sum; that his general reputation would have warranted that conclusion.

142 Q. $20,000.00 or $25,000.00?

A. Perhaps to that extent.

Q. Your next note, please.

A. Western Manufacturing Co., $125,000.00.

Q. And what proportion of that was taken subsequent to December 16, 1892?

A. $55,000.00.

Q. I understand you to say that this paper made by the Western Manufacturing Co. was spurious paper; that (is), it was made by some one in the employ who signed the same, Western Manufacturing Co., by Hurlbut, Jr., manager?

A. Yes, sir.

Q. I will ask you if there was a Western Manufacturing Co. doing business here who were considered good at that time?

A. Yes, sir; there was.

Q. I will ask you how this paper was scheduled upon the bills receivable; that is, whether it showed who made it for the Western Manufacturing Co.?

A. Sometimes the record shows Western Manufacturing Co. and sometimes shows Western Manufacturing Co., E. Hurlbut, Jr., manager.

Q. What proportion of that $70,00-.00 in paper of the Western

Manufacturing Co. held by the bank and taken prior to December 16, 1892, disclosed upon the bills-receivable record that it was made by E. Hurlbut, Jr.?

A. $65,000.00.

Q. There was a Western Manufacturing Co. here at that time that was solvent or supposed to be?

A. Yes, sir.

Q. You base your estimate, then, as to the insolvency of the makers of these notes to which you have referred, upon their condition as you knew it when the notes were, or appeared to have been, discounted by the bank?

A. Not altogether.

Q. What proportion of the makers of these notes, then, to which you have referred, do you say were insolvent at the time they were discounted, or do you say that all of them were? I mean not only the notes you have mentioned, but all the notes to which you have referred.

A. I think all the paper that I have testified to as being worthless was worthless at the time the bank discounted the notes.

Q. And do you find in the records of the bank that these notes—many of them were renewals of other notes?

A. Yes, sir.

Q. Mr. Hayden, I will ask you if from the books of the bank you can trace these notes back to the original indebtedness?

143 A. Yes, sir; I think so in most cases at least. It may be difficult in some particular note, but as a general thing I can trace them back to the original entry.

Q. I will ask you how long it would probably take to trace back these notes where the renewals have been frequent.

A. That would depend on how many notes you want to trace back, it would probably take considerable time.

Q. Is it a fact that a number of these notes that you characterize as bad paper, represent a number of renewals of an original indebtedness running back to neraly the beginning of the bank?

A. Yes, sir; some of the paper would run back, if not to, almost to the beginning of the bank?

Q. Now, as to that paper, you would not be prepared to say whether or not the makers were good and solvent at the time of making of the original loan, would you?

A. I would not know as far back as the time the bank commenced business, as to the solvency of the makers of the paper.

Q. Now, the note of F. A. Falkenburg, do you know when that indebtedness which this represents had its inception?

A. No, sir; I do not.

Q. A renewal note, is it not?

A. Yes, sir.

Q. M. C. Frank, do you know when that indebtedness was incurred which that note represents?

A. No, sir; I do not.

Q. Was that a renewal note, do you know?

A. Yes, sir.

Q. O. O. Heffner, do you know when that indebtedness was incurred which the note represents?

A. Only about the time.

Q. Was that a renewal note?

A. Yes, sir; it was a renewal.

Q. C. W. and W. W. Marsh, do you know anaything about that indebtedness?

A. Yes, sir.

Q. Was that a renewal note?

A. Yes, sir; it had been renewed a good many times.

Q. That indebtedness was incurred at about the beginning of this corporation, was it not?

A. I believe it was.

Q. Do you know whether there was any security with that note at that time?

A. I do not know.

Q. Do you know whether the note was (collectable) at that time, from the security or otherwise?

144 A. I do not think it was, because I know that the Marshes failed just before the Capital National bank was started.

Q. Do you know whether the Capital National bank had any security out of which they could have made this at that time?

A. No, sir.

Q. Marsh Binder Manufacturing Co., do you know anything of that indebtedness?

A. The history of that is about the same as the other.

Q. That was a renewal note?

A. Yes, sir.

Q. And run over a long period of time?

A. Yes, sir.

Q. You do not know whether they had any security for that note out of which it could be collected?

A. No, sir.

Q. Sycamore Marsh Harvester Co.?

A. That is about the same.

Q. You do not know anything more about that than the others?

A. No, sir.

Q. W. A. Sharrar, what do you know about that indebtedness?

A. Well, it is an old matter.

Q. And this note represents the renewals, does it, the last renewal?

A. Yes, sir.

Q. Do you know whether Mr. Sharrar was solvent, and that note collectible from him at the time of incurring the indebtedness which it represents?

A. — do not think it was.

Q. You do not know what security they might have had at that time?

A. If they had security, it would be before.

Q. C. E. Turk, what do you know about that indebtedness?

A. It is an old matter.

Q. There have been several renewals culminating in the present note, have there?

A. Yes, sir.

Q. Do you know anything about his condition at the inception of that indebtedness?

A. No, sir.

Q. I understand you in your direct examination to say that at the time of the suspension of the bank, the total liabilities as shown by the books and records, amounted to $1,463,013.07?

A. I do not know that I said the books of the bank showed that.

145 Q. I said the books and records.

A. I said that the liabilities at the time the bank failed amounted to $1,463,013.07.

Q. How do you determine this, Mr. Hayden?

A. By claims presented to the receiver.

Q. Have claims amounting to $1,463,013.07 been allowed?

A. No, sir.

Q. What are the total liabilities so far as allowed?

A. $849,109.37.

Q. And what has become of the other $600,000.00 not allowed, had that been presented to you for allowance?

A. All of it with the exception of a few small deposits shown by the books.

Q. Have been presented?

A. Yes, sir.

Q. I understand you have only allowed $849,000.00?

A. Yes, sir.

Q. Why has not the $613,000.00 been allowed?

A. A large part of it is in litigation.

Q. Seeking to establish claims?

A. Yes, sir.

Q. So you do not know whether these are valid claims or not?

A. Only so far as my judgment goes.

Q. You are resisting the payment of them, are you not?

A. Yes, sir.

Q. Is a part of this liability the amount due the State treasurer as shown by the bank books of his pass book?

A. Yes, sir, nearly a quarter of a million dollars.

Q. And do the books of the bank show this as his pass book shows it?

A. No, sir.

Q. Do you know which of those books is correct of your own knowledge?

A. Yes, sir.

Q. Well, go on and state.

A. The State treasurer's pass book is correct so far as showing that he deposited certain certificates with the Capital National bank on receiving credit in his pass book in lieu of the certificates. The books of the Capital National bank also show that the certificates which the State treasurer deposited had been issued, but the amount

had not been placed to the State treasurer's account in open account, only a portion of it being so placed.

Q. From that I understand that in order to get the condition of the bank at any time, to ascertain the condition of any account, through the method adopted by Mosher and Outcalt in the
146 keeping of the books of the bank, it would have been necessary to have gone through all of the books to have determined the condition of the bank, would it not?

A. Yes, sir, to have determined the true condition.

Q. In other words, if any one had opened up the ledger showing the condition of the State treasurer's account, it would not have shown within $236,000.00 of what it was, would it?

A. Yes, sir, all of the certificates except $150,000.00 had been placed to his credit.

Q. It would not show within this $150,000.00?

A. That is right.

Q. You stated in your direct examination that the receiver has allowed claims to take up certificates of deposits issued by the bank, amounting to $356,649.49?

A. Yes, sir.

Q. And that the bank shows with regard to these certificates of deposit, that they only amounted to $86,000.00?

A. Yes, sir, $86,265.70.

Q. Now, Mr. Hayden, how would any one detect—how could any one from the bank books detect or determine that certificates of deposit in greater amount than shown by the bank's books were really in existence, or that in this case whereas the books of the bank show $86,265.70, there were really $356,149.49?

A. A list of certificates not marked paid taken from the certificate of deposit register ought to show the correct amount of certificates outstanding, and these ought to agree with the certificate account in the balance book of the bank?

Q. Just state whether it would in this instance.

A. I am unable to say whether it would or would not; I do not think it would, because the certificate of deposit register shows erasures and changes opposite the certificate on the register.

Q. Was there anything to show in the bank records that these certificates of deposit issued, amounted to more than $86,000.00?

A. Yes, sir.

Q. State what.

A. If all the certificates issued by the bank as shown by the stubs of the certificates had been listed, and all the certificates paid by the bank and shown to be in the possession of the bank had been subtracted from the total amount issued, there would have appeared more certificates outstanding than the books show.

Q. Do I understand you, that that was not done, and that no such account as that was kept? Am I correct in this?

147 A. No; the bank kept a certificate register, and also stubs of all certificates, and also kept a certificate account.

Q. Did this account show the true condition of affairs?

A. Not in one account; that account taken in connection with the other would have shown discrepancies.

Q. Now, as I understand it, the method of issuing those certificates was to make the stub for a small amount, the certificate for a larger amount, and make the certificate register agree with the stub itself in amount?

A. Yes, sir.

Q. Now, what further record did they keep of that certificate and how?

A. It was done in the manner you speak of sometimes, and sometimes it was not. For instance, the stub and record would not be changed so as to agree. In fact, many of the stubs have not been changed so as to agree. In fact, many of the stubs have not been changed at all, only the records.

Q. As I understand it, there was a part of those certificates issued, the stubs of which show, and the certificate register, that the amount issued was only $86,000.00, while in fact the certificates themselves were drawn for an amount in excess of this and equaled $356,000.00 in round numbers. Now, the certificate register and the stub were made to agree, were they not, as to the amount of which these were issued?

A. No, sir; only in some cases.

Q. I am referring now to those particular cases where those were issued.

A. Which particular cases?

Q. Those you have paid certificates on, that you have been testifying to, where you show $86,000.00 issued, when in fact, as far as the books show, the amount was $356,000.00?

A. $86,000.00 is shown by the balance book of the bank, which is the net amount outstanding, the amount being credited with deposits and charged when paid.

Q. I understand from you, Mr. Hayden, that there are a number of stubs of the certificates which show the amount for which the certificate of deposit was issued to be one small sum; that the certificate of deposit register tallied, so far as the amount was concerned, with the amount set forth in the stub of the certificate.

A. Yes, sir.

Q. So that as to the stub of the certificate and the certificate of deposit register, so far as those were concerned, there was no way of detecting the actual amount of the certificate until its return or presentation for payment?

A. That would be the case.

148 Q. Now, I understand that they kept another account—a certificate of deposit account in the ledger—a general certificate of deposit account.

A. It is only a balance-book account.

Q. They kept no separate account of the certificate of deposit account?

A. Except in the balance book.

Q. They did keep one there?

A. Yes, sir.

Q. Now, were the entries in that account taken from the certificate of deposit register or from the stub of the certificate, or were they made up from the certificate itself?

A. I do not know from where the book-keeper got his debits and credits to place on the balance book.

Q. Did that certificate of deposit account in the balance book contain the true amount set forth in the certificate of deposit in all instances, or did it sometimes contain the amount of the certificate of deposit as shown by the stub and the certificate of deposit register?

A. Sometimes the one and sometimes the other.

Q. So that the books themselves would not have disclosed and did not disclose the true condition of the certificate of deposit account?

A. They did not.

Q. Who issued the certificates of deposit amounting to $356,649.49 concerning which you have testified?

A. President, cashier, and teller.

Q. Do you know what proportion were issued by each of them?

A. No, sir; I do not.

Q. Do you know whether the cashier or the teller, either of them, made false entries upon the stub books or issued certificates of deposit for a larger amount than shown by the stub?

A. No, sir; I do not.

Q. All that were so issued by the president, C. W. Mosher?

A. Yes, sir; so far as I have discovered.

Q. I will ask you if you know, Mr. Hayden, whether the difference between $86,000.00 and the $356,649.49 represented the excess of issue or fraudulent issue by C. W. Mosher represented it all.

A. No, sir; there has been a certificate presented for which no claim has been allowed for $150,000.00, and there may be some few certificates outstanding yet that have not been presented.

Q. Is this the certificate of deposit to which you referred as having been issued to J. E. Hill, treasurer, and turned over by him to Mr. Bartley?

149 A. Yes, sir.

Q. What is the amount of excess in the certificates of deposit actually issued over the amount as shown by the stubs of the certificate book, if you know?

A. I do not know that.

Q. Can you tell?

A. I have no idea; I do not think it could hardly be arrived at now, because I do not know that even all the stubs could be found, and if they were, we also would have to find all returned and paid certificates and deduct the paid certificates from the total amount as shown by the stubs. Even this would not show the true state of the account, as the certificate register was changed by the word paid being put opposite certificates which were really not paid, reducing the apparent number of certificates outstanding quite an amount.

Q. By whom were these books manipulated, do you know?

A. C. W. Mosher.

Q. Do you know how further they were manipulated than what you have already testified to?

A. Do you mean the certificate account?

Q. Yes, sir; the certificate account.

A. Mosher would charge the certificate account without any certificates being paid, simply by putting in a slip reducing the certificate account and using the amount for other purposes, and then marking up enough certificates paid to have the account agree with the register.

A. That was in addition to the method you have already explained of making a small stub and large certificate?

A. Yes, sir.

Q. And to which you testified in your direct examination?

A. Yes, sir.

Q. Now, by examining the stubs of the certificate of deposit books and the certificate of deposit register, would this be apparent to any one that these had been manipulated?

A. Yes, sir.

Q. It would be apparent?

A. Yes, sir; because he did not always change the stub and the register in respect to the same certificate.

Q. Just mark them indiscriminately?

A. Yes, sir.

Q. So you have taken a comparison in that way in order to determine it?

A. Yes, sir; that would have determined it.

Q. You testified yesterday in your examination to a number of losses and bad debts charged off and the method of Mosher in manipulating these?

A. Yes, sir.

150 Q. How would it be possible to detect that without an examination of all these accounts?

A. It would not require an examination of all the accounts; for instance, if Mosher had charged the Chemical National Bank of New York with a false amount, an examination of the statement rendered by the Chemical National bank to the Capital National bank and checked up properly would have disclosed the discrepancy.

Q. It would have taken some one familiar with the banking business to know where to go to detect these discrepancies, would it not?

A. Yes, sir.

Q. These bad debts you testified being charged off, do you know whether they were in fact paid to Mosher or not?

A. I think they were. I do not know.

Q. I understand that you say there was a change May 21, 1892, to stocks and bonds as assets of about $46,000.00, and it was evident at that time that the bank owned no stocks. Upon what do you base that, Mr. Hayden? You could not tell from Mosher's bookkeeping whether they had any or not?

A. Because he eliminated the account by a false entry. It is pos-

sible they might have had the stocks and bonds, but if they did Mosher appropriated them to his own use.

Q. And simply made a false entry for the purpose of covering up his appropriation?

A. Yes, sir.

Q. Now you had a certificate of deposit here yesterday upon which you testified was issued in the name of J. E. Hill and signed upon the back of it J. E. Hill in a handwriting which you said was C. W. Mosher's?

A. Yes, sir.

Q. Do you know whether Hill ever authorized Mosher to write his name on that or not?

A. No, sir.

Q. Now, in regard to this interest-paid account to which you testified yesterday; as I understand that now, Mr. Hayden, the interest account was kept in two books?

A. Yes, sir.

Q. One was an interest paid, the other interest-received account?

A. One was an interest-received account, but the word received was not used. That account was called the interest received—was called discount, interest and exchange, and represented the receipts of interest and exchange of the bank.

Q. Now by that, all the credits have appeared that you testified yesterday to having appeared in the interest-paid account,
151 should they not? That book is all credits, is it not, so far as the interest account is concerned?

A. Yes, sir, but the credits I spoke of yesterday ought not to go onto that account.

Q. Well, all credits, all interest credits should go upon that account, should they not?

A. Yes, sir.

Q. So that it was an unusual thing for the credits to appear upon this interest-paid account?

A. Yes, sir.

Q. Now, I understand you to say yesterday in your direct examination that there were no credits or that the debits—the interest paid exceeded the other account so that there were no profits upon which to base a dividend. Is that correct?

A. I said if the credits to the interest-paid account had not been made, there would not have been sufficient earnings to make a dividend.

Q. Do you know what the interest-received account or discount account would show as to the interest received, the credits?

A. I do not know without looking it up.

Q. Will you look that up?

A. For how long a period?

Q. The same period that you covered yesterday.

A. Yes, sir.

Q. I understand you to say yesterday without these credits there was not interest enough to warrant them in declaring a dividend?

A. That is right.

Q. I want to see what interest was received. They charged interest paid with certain payments?

A. Yes, sir.

Q. I want to show what the interest received was as well as interest paid.

A. The discount, interest, and exchange account amounted December 31, 1894, to $31,956 85
June 30, 1885, it amounted to..... 28,451 97
December 31, 1885, it amounted to 35,693 37
June 30, 1886, it amounted to..... 36,434 36
December 31, 1886, it amounted to..... 37,601 08
June 30, 1887, it amounted to..... 39,946 64
December 31, 1887, it amounted to..... 42,700 74
June 30, 1888, it amounted to..... 38,240 90
December 31, 1888, it amounted to..... 42,082 82
June 30, 1889, it amounted to..... 39,770 89
December 31, 1889, it amounted to 38,807 51
June 30, 1890, it amounted to..... 34,751 76
December 31, 1890, it amounted to..... 35,650 55
152 June 30, 1891, it amounted to..... 37,878 65
December 31, 1891, it amounted to..... 31,415 06
June 30, 1892, it amounted to..... 31,038 30

Q. You testified yesterday that the certificate of deposit account shows a certificate April 15, 1891, for $100,000.00. Do I understand you that the certificate was actually issued to Hill at that time for $100,000.00?

A. No, sir, I do not think it was ever issued to Hill, only in his name.

Q. This certificate was afterwards cancelled in April, 1891. Was there a certificate issued or only the books of the bank show it?

A. A certificate was issued.

Q. Was actually issued?

A. Yes, sir, as stated.

Q. Yesterday, in your direct examination, Mr. Hayden, I think you stated that the books show that the directors returned and ordered dividends, when the books and records in fact show losses and no earnings. Will you tell what books disclose this, and how much of an examination it would have required to discover this?

A. Particularly the interest-paid account book would have shown a much larger sum paid out on account of interest than the amount reported to the board of directors by the cashier or president. A slight examination of that book would have shown the false credits before spoken of. And also an examination of the bills-receivable book would have shown bad debts as designated by the Revised Statutes overdue and unsecured, interest unpaid and not in course of collection, which ought, under the national banking laws, to have been charged off before a dividend was declared.

Q. You could not say that a bank was solvent because the paper was past due, would you, Mr. Hayden?

A. No, sir.

Q. You state, Mr. Hayden, that you sent a notice to Gruetter & Joers?

A. Yes, sir.

Q. Do you know what business they are in or were at that time?

A. In the furniture business.

Q. Do you know whether they are still engaged in that business?

Complainant objects to the question as not proper cross-examination.

A. I believe they are.

Q. I will ask you if your books disclose that at the time of the transfer of this stock from the defendant herein, Ambrose
153 P. S. Stuart to Gruetter & Joers, there was also surrendered to this bank three certificates of deposit, one for 5,000.00 and two for $2,000.00 each, duly issued to the defendant Ambrose P. S. Stuart by the said bank, and indorsed by him to Gruetter & Joers?

A. The certificates you mention were paid.

Q. Will you make and attach copies of these certificates to your deposition, and make them a part of the same?

A. Yes, sir.

Copies of said certificates are hereto attached and made a part of this deposition, marked Exhibit- 76, 77, 78.

Redirect examination.

By G. M. LAMBERTSON:

Q. Mr. Hayden, you say on cross-examination that $68,000.00 of the Mosher notes were put in after December 16, 1892. How many were put in after January 3, 1893?

A. None of them.

Q. How many were put in between December 16, 1892, and January 3, 1893?

A. $68,333.34.

Q. You say in your testimony that there was $55,000.00 of the Western Manufacturing Co.'s notes put in aafter December 16, 1892. How many of them were put in after January 3, 1893?

A. $40,000.00.

Q. Mr. Hayden, is it not true that there were sufficient erasures in the certified register to have attracted attention if the same had been examined?

Respondent objects as calling for a conclusion and as incompetent and immaterial.

A. Yes, sir.

Q. Did I understand you to say that the stubs and the register always corresponded, or did I understand you to say that sometimes they were different?

A. Sometimes they were different.

KENT K. HAYDEN.

Complainant now offers in evidence a certified copy of a warranty deed from Ambrose P. S. Stuart and wife to Charles Holland, dated and filed for record in the office of the register of deeds of Lancaster county, Nebraska, on the 5th day of December, A. D. 1893.

154 Respondents object to this offer as incompetent, immaterial and no proper foundation having been laid.

Said certified copy of deed is hereto attached and made a part of this deposition, marked Exhibit 79.

Complainant also offers in evidence a certified copy of a general power of attorney from Charles Holland to Ambrose P. S. Stuart bearing date the 1st day of December, 1892, and filed for record on the 27th day of December, A. D. 1882.

Respondent objects to this offer as incompetent, immaterial and no proper foundation having been laid.

Said certified copy of power of attorney is hereto attached and made a part of these depositions, marked Exhibit 80.

DEBORAH G. KING, being by me first duly examined, cautioned, and solemnly sworn, testified as follows:

Questioned by Mr. LAMBERTSON:

Q. What is your full name, Mrs. King?
A. Deborah G. King.
Q. You reside in the city of Lincoln?
A. I do.
Q. How long have you lived here?
A. 23 years in October, last October.
Q. And what is your husband's name?
A. Doctor S. H. King.
Q. Were you stockholders in the Capital National bank?
A. I am glad to say we were not.
Q. Were you depositors in that bank?
A. We were, sir.
Q. How much money did you have on deposit when the bank failed?

Respondent objects as not the best evidence, and as immaterial and incompetent.

A. $26,105.80 the morning of the closing of the bank.
Q. Were you acquainted with Mr. A. P. S. Stuart, the respondent in this action?
A. Oh, yes.
Q. How long have you known him?
A. I don't know, I think about 19 years—since when the first came here, before he brought his wife.
Q. You have known him then, about 19 years?
A. Yes, sir; about that time.
Q. Did you have any conversation with him on the morning of the failure of the bank?

A. Yes, sir; I did.

155 Q. Where?

A. At his house.

Q. Who was present there at that time?

A. Well, his wife was present part of the time and part of the time no one but him in the room. May I state the conversation I had with him?

Q. Yes; go on and state.

A. I had been up all night with an invalid brother, and I took up the Morning Journal and noticed that the Capital National bank had closed its doors, and I at once repaired to my husband's room and quietly awakened him. This was not far from six o'clock in the morning, and after talking with him a little while he dressed himself and came down. We were very much shocked, as we never heard of anything wrong with the bank, and I went downstairs, and he soon followed, and we talked over what was best to be done, and he says, I will go on and see Mosher and you see Professor Stuart, and let us find out what about this bank; it was not quite daylight yet, it was quite dark. I should judge it was about 7 o'clock, and I put on my wraps and repaired to Professor Stuart's home. Mrs. Stuart was in bed, and she got up and came to the door and asked what the matter was. I said, Good Lord, what does this mean about the bank having failed? She said, Is that the Capital National bank? I said, Yes. She said, Where did you get it from? I said, From the Journal. She said, I will call the Professor, and I said, Go and see the Professor and see what is the matter with the bank. I think she stepped into another room and called him as though he was in the chamber or another room at least. He came in and I asked him what was the matter with the bank. She said, Now you tell the Professor, and she stepped into her room off of the office of sitting-room or whatever it was called, and the Professor sat down and told me what he knew about the bank. I told him the Doctor had sent me there for him to tell me all about the bank, what the condition had been and if there was anything wrong, and he sat down and in his good, quiet way told me he did not like the way the bank had been doing for a long time. He said he did not like their going into the Western Manufacturing Company business, and he said he had a talk with Mr. Mosher about it, and he said he did not like the Arkansas business, and I asked him what that was, and he said it was a stave business, and he said he did not know of any loss of money in it, but he did not like it, and he said from that they went into the skating-rink business, and he said then he felt mad, and he said this is not banking, and I told them so, and then he said, when they went into the base-ball business I said it must be stopped;

156 that we must stop that and do a banking business, and not run after these outside affairs, and as near as I can give it he said they were mad, but he told them if they did not stop that kind of business he would get out.

Q. Who do you mean by them?

A. Mosher and Outcalt, and he said one of them swore very badly and used very bad language, and he said particularly Mosher, and

at this time I said the Doctor has gone to see Mosher about it, and he said if he has not gone you tell him to go to Outcalt, because he can get the truth out of Outcalt better than Mosher. And I said, Professor, what is the condition of the bank? Why was it closed? He says I have known for quite a while they had some bad debts such as very poor paper there, amounting to about $136,000.00, and he says, I did not like the way they were doing. They could not do outside business and that too, and I did not like it. And of course anybody who knows Professor Stuart knows that would not be the way of his doing business, and he said he was in hopes they would tide it over, and he said they had some very poor paper, and he spoke of some land in a different county, and at that Mrs. Stuart came in and he says you know I have sold out—which I had not known—and he said, Well, he had traded his stock for the Gruetter building a short time before. At this juncture Mrs. Stuart came into the room and she says, "It don't let you out fr[illegible] being responsible, does it? How long has it been?" Oh, no, he says, and then he spoke about the board of directors——

Respondent objects to the testimony being given by the witness, and moves to strike the same out as immaterial and incompetent, and as relating facts occurring long after the severance of this respondent with the Capital National bank and objects to the declaration of this witness as to what was said at that time as hearsay, and as incompetent and immaterial.

Q. You may state any further conversation you had with the respondent, Mr. Stuart, that morning, relative to the failure of the bank, and its condition.

Respondent objects to the question as incompetent and immaterial.

A. He went on and told me about it, he said he had not liked the management of the bank, and felt anxious about it; and I asked him how long, and he said a long time, and he went on and repeated again what he said before about going off into side business and said he did not like their not being able to declare a dividend, and I asked him this question. If——

157 Respondent objects to the witness taking a declaration made by this party at that time as incompetent, immaterial and hearsay.

A. (continued). I asked him why the bank was not closed in the condition it was, and asked him if he did not know that the bank's capital was impaired, and he said that it was; still he did not know he said about having the bank closed. And I said if the bank had been closed we could have gotten something out of the bank, and he said he was in hopes they could tide it over and Mrs. Stuart says, Professor, you did not expect this so soon——

Respondent objects to any statements made by Mrs. Stuart as incompetent and hearsay.

A. (continued). Why no, he says I did not.

Cross-examination.

By Mr. FLANSBURG:

Q. You say the Professor said that the first thing he objected to was going into the Western Manufacturing Company?
A. I think that was the first thing he objected to.
Q. And he was talking about Mosher and Outcalt?
A. He was talking about them; yes, sir.
Q. And he objected to their going into the Western Manufacturing Company?
A. Yes, sir.
Q. And he objected to the Arkansas business—the stave business?
A. He said he did not like it.
Q. Then he objected to Mosher and Outcalt going into the skating-rink business?
A. Mr. Mosher.
Q. He objected to Mr. Mosher going into the skating-rink business?
A. Yes, sir.
Q. Then he objected to Mosher and Outcalt going into the base-ball business?
A. Mr. Mosher went into the base-ball business.
Q. And he said that must be stopped because it was not banking?
A. Yes, sir.
Q. Do you know what positions they occupied in the bank?
A. Yes, sir.
Q. President and cashier, were they?
A. Yes, sir.
158 Q. Of the Capital National bank?
A. Yes, sir.
Q. The Professor objected to their running around with business that belonged to the skating rink, and buying lumber, and the Western Manufacturing Company while they were trying to run the bank?
A. That is what he said.
Q. And he said they had bad paper?
A. Yes, sir.
Q. And bad real estate?
A. Some poor real estate, he said.
Q. And therefore they were not able to declare a dividend?
A. He did not say therefore. He said he did not like it because they did not feel that they could declare a dividend.
Q. Did he say that was the reason he had sold out?
A. He said he did not like the way they were doing the business.
Q. He said there were too many side issues?
A. He said there was too much outside business and he did not like that.
Q. He did not like that?
A. No, he said that was not banking.

Q. And for that reason he wanted to get out?
A. Yes, sir.
Q. Did he say that the capital of the bank had been impaired?
A. He said he did not know.
—. ——.
A. He did not say he did not know, he said he thought it was.
Q. He was giving you an opinion, was he?
A. I think that was what he was doing.
Q. Did he give you any reason for that opinion?
A. I simply asked him the question.
Q. And he said it was?
A. Yes, sir.
Q. I understood you to say in your direct examination that he said he did not know as the capital of the bank was impaired, but he thought it was.
A. No, sir; he did not say that.
Q. You are positive of that, are you, that you did not say that?
A. I said he did not say——
Q. Answer the question.
A. You did not ask the question as I gave it. I asked him if the capital of the bank was impaired and he said he thought it was.

Q. I understood you to say in your direct examination that
159 in your conversation with Professor Stuart he said that he did not know as the capital of the bank was impaired but he thought it was?

A. He did not say any such thing, and I never said any such thing.
Q. You are positive of that, that you never said that in your direct examination, are you?
A. Said what?
Q. What I have asked you?
A. That Professor Stuart said that he did not know whether it was or not?
Q. Yes.
A. Yes, sir; he said he thought it was impaired.
Q. You are just as positive of that fact as you are of anything else you have sworn to, are you?
A. I am positive of it, sir.
Q. Just as positive as you are of anything else you have sworn to?
A. Yes, sir; I am.
Q. That he said the capital was impaired?
A. Yes, sir; he said he thought it was impaired.
Q. You are just as positive of that as anything else, are you, that you have sworn to?
A. I think so.

DEBORAH G. KING.

(Witness excused.)

HENRY GERNER, being by me first duly cautioned, examined and solemnly sworn as hereinafter certified, testified as follows:

Questioned by Mr. LAMBERTSON:

Q. What is your full name?
A. Henry Gerner.
Q. Where do you reside?
A. In Lincoln, Nebraska.
Q. And how long have you resided in Lincoln?
A. This coming spring it will be 24 years since I located here.
Q. And what has been your business?
A. The insurance business. I have followed that nearly 30 years.
Q. Are you acquainted with the respondent in this case, Mr. A. P. S. Stuart?
A. Yes, sir.
Q. Were you acquainted with C. W. Mosher and Richard Outcalt?
A. Yes, sir.
Q. Did you have any connection or hold any stock in the Capital National Bank of Lincoln, Nebraska?

160 Respondent object- as not the best evidence, incompetent and immaterial.

A. Yes, sir; I purchased some stock in the Capital National bank.
Q. About what time?

Respondent object- as not the best evidence, incompetent and immaterial.

A. In 1887, the summer of 1887 I purchased 50 shares of stock from Mr. Charles C. Hammond, and two years after, in 1889, I purchased another 50 shares of stock from Henry E. Lewis.
Q. So how many shares did you hold at the date of the suspension of the bank?
A. 100 shares.
Q. Do you remember the date the bank closed its doors?
A. Yes, sir.
Q. What date was that?
A. Well, the bank closed its doors on Saturday evening, the 18th or 19th of January, and on Sunday they held a meeting, a special meeting in the bank at which I happened to be present, and it was decided then that we should not open the doors any more—that we could not open.

Respondents move- to strike out the answer of the witness as not responsive to the question and as voluntary on the part of the witness.

Q. So that after closing its doors on Saturday it did not open its doors on the Monday following?
A. No.
Q. That was in 1892, was it?

A. No, sir; that was 1893, in January, 1893, two years ago.

Q. Do you know what official position the respondents, A. P. S. Stuart, held in that bank, if any?

Respondent object- as incompetent and immaterial and not the best evidence.

A. Yes, sir.

Q. What position did he hold?

Respondent objects as incompetent, immaterial and not the best evidence.

A. Director and chairman of the finance committee.

Q. Did you have any conversation with the respondent, A. P. S. Stuart, as to the proposed sale of his stock to Gruetter & Joers shortly before the failure of the bank?

A. Well, yes, some three months I should say.

161 Respondent objects to the witness making any voluntary statements, the question having been answered.

Q. You may state what that conversation was.

Respondent object- as incompetent, immaterial and not the best evidence.

A. Well, one afternoon I met the Professor, which was an almost daily occurrence, if I did not see him in the bank I met him on the street, and we passed the compliments of the day and some remarks, and one day, in one of our conversations and talks he told me that he was contemplating making a real estate deal, I said "yes," "yes," he says he had a proposition made him to purchase the Gruetter block down here, and it was a trade, and he said if he made the trade at all, it would be trading his bank stock and some money and assuming their liabilities, their obligations, a mortgage on the building for $30,000.00. I told him I thought it was rather an exorbitant price for the property, that I did not consider the bu-lding worth any such money, to which he responded that they were going to make a very good lease, they would take it for ten years—a ten years' lease on the premises at a rental of $6,000.00 a year. I told him I did not think it was possible for those men in the business to pay any such rent, it was too risky. Well, the Professor replied, we have to take some risk. Well, I said, I should rather, if I was in your place hold my stock and my interest in the bank. I think it is better or safer. He said he did not like the way they were doing business, he did not like the style, and a large share of the bank's capital was tied up in real estate and there was no prospect of dividends, and he preferred to do his own business and manage his own affairs. That is all there was to that conversation.

Q. Did you have any subsequent conversation with him about the matter?

A. Well, yes. I guess it was after he made the trade, either he told me about it or I took occasion to remark, I see you made that trade, Professor. Yes, he says, I did; he says, as I told you before

I don't like Mosher and Outcalt's ways of doing business and I shall prefer to manage my own affairs hereafter.

Q. Did he in any conversation you had with him say anything about the amount of the capital stock of the bank that was tied up in real estate?

A. Yes, some $130 or $140 thousand dollars, about 140,000 he said was tied up.

Q. Do you remember about the time when the last dividend of the bank was returned?

162 Respondent objects as incompetent and immaterial and not the best evidence.

A. It was a dividend of four per cent. declared in July, 1892, That is the last dividend I was credited with.

Q. Did you have any talk with the respondent, A. P. S. Stuart, as to whether a dividend would be returned the first of January, 1893, or for the close of the year 1892?

A. Well, only this, the Professor told me that in all probability there would be no dividend declared in January, owing to the fact that a large amount of the bank's capital was tied up in real estate, and until the amount was reduced and property converted into cash the bank could not pay any dividend.

Cross-examination.

By Mr. FLANSBURG:

Q. You say, Mr. Gerner, that he said he did not like the way that Mosher and Outcalt did the business. Did he give you in detail the management of that business he objected to, or was that the sum total of his remarks, that he did not like the way they did business?

A. He says, oh, yes, he made comments on Mosher's being in so many things and having so many irons in the fire and paying too much attention to outside matters. As to Outcalt, I do not know whether the Professor made any comments on his conduct or not.

Q. And the reason he gave you at that time for getting out was because he wanted to manage his own business, and he did not like the way they managed the business?

A. He did not like the way they conducted the business.

Redirect examination.

By Mr. LAMBERTSON:

Q. Did Mr. Stuart say where this land was situated, or what land it was?

A. Yes, he mentioned lands up in York county.

Q. Did he mention how or on whose account this York County land came into the hands of the bank?

A. Oh, no, not in that connection. He might have mentioned to me previous to that time that the bank had a large amount of

land caused by the Small matter, but that was something I was not familiar with and the Professor knew that and never went into the details, there was no occasion for it, because it was a matter I did not know anything about and did not concern me in the least.

Q. You were not a director in the bank yourself, were you?

A. Never.

163 Q. Did the bank pay any dividend on the 1st day of January, 1893?

Respondent objects as incompetent and immaterial and not the best evidence.

A. No, sir.

HENRY GERNER.

Witness excused.

AUGUSTUS THEODORE GRUETTER, being by me first duly cautioned, examined, and solemnly swor o testify the truth, the whole truth and nothing but the truth, te: ed as follows:

Questioned by Mr. LAMBERTSON:

Q. What is your full name?

A. Augustus Theodore Gruetter.

Q. How long have you resided in Lincoln?

A. About 19 years.

Q. What is your business?

A. I am engaged in the furniture business.

Q. Are you acquainted with the respondent in this case, A. P. S. Stuart?

A. Yes, sir.

Q. And how long have you known him?

A. Well, I have known him I think for about three years—that is, I have known him before that by sight, but was not acquainted with him. I heard his name mentioned, etc., before that.

Q. Did you purchase from him any bank stock in the Capital National bank?

A. Yes, sir; we took it in trade for the building.

Q. What date was that?

A. I think the trade was made on the 17th of December, if I am not mistaken.

Q. What year?

A. 1892. The deed (*were*) turned over about a week later.

Q. What did you trade for that property?

A. We sold him the building for $67,500.00.

Q. How much of a mortgage was on that building?

A. $30,000.00.

Q. Was there any other liens?

A. No liens of any kind.

Q. And what did he pay you?

A. He paid us $19,500 in cash, we accepted the bank stock, $15,000 worth for $18,000.00 and he assumed the mortgage of $30,000.

164 Q. Did you execute to him a lease of the building?

A. Yes, sir; the corporation—Gruetter & Joers Furniture & Carpet Company corporation made a lease with him for the building.

Q. How much?

A. Ten years at a yearly rental of $6,000.00.

Q. Now, you may state what representations were made to you, if any, as to the value of that stock and the condition of the bank by the respondent, A. P. S. Stuart, at or about the time the exchange was made.

Respondent objects as not the best evidence and as incompetent and immaterial, and no foundation laid.

A. Mr. Stuart came in there before we made the trade, and we asked him about the soundness of the Capital National bank and he said that the bank was in a safe condition, then when we spoke about taking the stock he also stated that he had been offered $1.25 by eastern parties only a few months before that time. I then afterwards called his attention to the fact that the surplus of the bank on the December statement was only $6,000.00, to which he replied that had been caused through the bank examiner throwing out all the bad paper of the bank a few months before, which amounted to about $30,000.00. But he said at the same time, that paper was not as bad as they took it to be, as the bank had already $14,000.00 of that paper in judgments against good parties, and this $14,000 would be added to the amount of the surplus as soon as that had been collected. I told Mr. Stuart at the time that we were offered $65,000.00 for the building in cash.

Respondent moves to strike out the last statement of the witness as voluntary on the part of the witness and as hearsay and incompetent.

A. (continued). I told him that we were offered that much in cash, and would accept the bank stock at no price, and would not take it under any consideration unless the bank was in good condition, and I also mentioned to him that I had found out through one of my friends that the bank seemed to be a little hard up, and was not loaning money very freely at that time, and I asked him what was the reason of it and he said that was only the case temporarily, and the bank would be in very much better shape soon, as they had been obliged to take a number of pieces of York County real estate for bad paper, and this real estate they were intending to sell, and as soon as that was sold they would be feeling much easier. In order to get us to take the stock he also said to us, in his own
165 words, "If I can make a turn or two shortly I will be glad to take the stock back from you at the very price you paid me for it, because it has paid me from 12 to 20 per cent. dividends, and the business outlook being very good, I think it will pay high dividends for the next — years." We then spoke also about the dividends, and the Professor said that he was not quite sure whether

or not there would be any dividend in January, but if there was any he considered himself entitled to that, but this we did not agree upon. We had quite a conversation about it. We said if we paid him as much as $1.20 for the stock we should have the dividends. Then I called his attention to the fact that the statement showed an undivided profit of about $21,000.00, and I mentioned that I surely thought they would declare a dividend out of the undivided profits. He replied that as the surplus was so small they would (verly) likely add the undivided profits this time to the surplus fund. Finally we came to an agreement to accept the stock on these representations; knowing that he had been very long a director and a chairman of the finance committee, we thought, of course, he knew all about the condition of the bank——

Respondent objects to the witness stating what the parties thought, and move- to strike out the statement of the witness in that respect as not responsive and as immaterial and incompetent under the issues.

Q. Did you rely on these representations made by the respondent?

Respondent object- as immaterial and incompetent under the issues.

A. We did; we relied on his own representations and we relied on the statements also.

Q. What statement?

A. The statement of the bank; the December statement that I referred to before. We compared that statement of the Capital National bank with the statement of the First National bank at that time, and the book value of the First National bank was about $1.40——

Respondent object- to this statement of the witness and moves to strike the same out.

A. (continued). And the book value of the Capital National bank was about $1.10 at that time. I happened to know that the First National bank stock sold at $160——

Respondent moves to strike out the testimony in regard to the First National bank as incompetent and immaterial and not the best evidence and not responsive to the question.

166 A. (continued). And the Capital National bank being valued at $1.10, I thought $1.20 would be a fair value——

Respondent objects to this evidence and moves to strike the same out as incompetent and irrelevant, not responsive to the question, and being an opinion of the witness.

Q. You may state whether or not you relied upon the statements made by the respondent, A. P. S. Stuart, and believed them to be true?

A. Yes, sir; I did.

Q. And did you rely on the published statement or the report to the comptroller which was published?

A. Yes, sir.

Q. Do you remember the date of that report?

A. I think the report was the 9th of December, but I think it was published on the 17th.

Q. The 17th of December?

A. Yes, sir; the 17th of December, 1892. The day we closed the transaction.

Q. Did Professor Stuart know that you had seen this report?

Respondent objects to the question as incompetent.

A. Yes, sir.

Q. Did you have any conversation with him about that report?

Respondent objects as leading and incompetent.

A. Yes; I called his attention to the fact that there was only $6,000 surplus, so we spoke about the statement.

Q. I call your attention, Mr. Gruetter, to what purports to be the original report of the condition of the Capital National bank at Lincoln, Nebraska, at the close of business on the 9th day of December, 1892, made to the Comptroller of the Currency, and bearing date the 15th day of December, 1892, a copy of which has been offered in evidence in this case, and ask if that is the report which you say was published in the Journal and about which you talked with the respondent, A. P. S. Stuart?

Respondent objects to this question as incompetent and immaterial and having no foundation laid.

A. Yes; this seems to be the same statement—$6,000 surplus and the undivided profits, $21,180.75. I remember those exactly. Of course, I cannot remember all these figures, but those—the main figures—I remember.

Q. What was your conversation with Professor Stuart about this report, if anything?

167 A. The conversation was that the statement was a very good one I thought with the exception of having a low surplus.

Q. This particular statement was not signed by Professor Stuart as one of the directors?

A. No; but he had signed other reports I had seen before. I had always compared the statements, I had been in the habit of doing that right along.

Q. I call your attention to a report made to the Comptroller of the Currency of the condition of the Capital National bank at the close of business on the 30th day of September, 1892, a copy of which had been offered in evidence, and which is signed by C. W. Mosher, president, and A. P. S. Stuart as one of the directors, and ask you whether you have any memory of seeing that particular statement?

A. I am not quite certain I have seen it, but I would not remember much about the figures because I did not examine that sa

closely as I did the other one, not intending to make a trade for that stock.

Q. Did you rely upon this other statement of the condition of the Capital National bank, and other statements published by that bank, including the one I have last shown you, in making up your mind to make this trade?

A. Yes, I did, as I remembered that they were always very good statements.

Q. You believed them to be true, did you?

A. Oh, yes, I believed them to be true, if not I would not have thought of trading for the stock, if that had not been the case.

Q. Did you make any inquiry of any officer of the Capital National bank as to its condition?

A. Yes, sir; I did.

Q. What officer?

A. I went to Mr. Outcalt in his office and inquired of him if the bank was in a good condition and what the stock was worth; I told him we were about trading for some of the stock, and would like to know what it was worth. His reply was that the stock was worth what any one wanted to pay for it, but as much as he remembered, the last sales had been made at the price of $1.30 to $1.40. He then inquired from me who had been offering his stock for sale, and I told him I was not at liberty to tell, because the trade was not completed.

Q. How long after you consummated that trade and got this stock was it before the bank closed its doors?

A. I think the agreement was signed on the 17th and I believe that the bank failed about the 19th of January, just about one month after.

168 Q. About a month after you became the owner of the stock?

A. Yes, I think it was the day before Christmas when we actually got hold of the stock, I think it was the 23rd or 24th of December that we got the certificates, but they were not transferred until after the first of January.

(—.) They were not transferred on the books of the bank until after the first of January?

A. No, sir.

Q. Was this stock purchased by the firm of Gruetter & Joers?

Respondent objects to the question as leading.

A. No. Well, yes, it was purchased by A. T. Gruetter & Company.

Q. Who constituted the firm of A. Gruetter & Company?

A. Charles F. Joers and A. T. Gruetter.

Q. What is the name of the corporation now engaged in the business there?

A. Gruetter & Joers Furniture & Carpet Company.

Q. That is a corporation, is it not?

A. Yes, sir.

Q. Now you may state, Mr. Gruetter, whether, counting this stock as worthless, the firm of A. T. Gruetter & Company or the individual

members were solvent and able to pay their liabilities, including the assessment on this stock, of 100 per cent.

Respondent objects as leading and calling for a conclusion of the witness, as incompetent.

A. Counting the bank stock as worthless, and assuming that we should be liable for the assessment of $15,000.00 we could not have paid. That is to say, after we counted the bank stock out as worthless, we might have had about $3,000 to pay the $15,000 assessment with, provided that our stock which we had at that time in the corporation was worth dollar for dollar, but if it had been necessary by suit to realize money out of the assets we would have been out at least $10,000 instead of being able to pay the assessment.

Q. You may state whether the firm of A. T. Gruetter & Company and the persons to whom this stock was transferred by the respondent Stuart would be able at the present time to pay this assessment of 100 per cent. on the stock, or any part of it, in the event a suit was brought and judgment obtained.

Respondent objects as leading, calling for a conclusion, incompetent and immaterial.

A. No, sir.

169 Cross-examination.

By Mr. FLANSBURG:

Q. Who first suggested to you, Mr. Gruetter, the idea of making a trade of that building to Professor Stuart?

A. That was Crooks.

Q. And how long was this before the 17th day of December?

A. Oh, I don't know the exact time, but I suppose it was several weeks before that.

Q. And you and Crooks had had considerable conversation, had you not, about this trade and concerning it?

A. Yes; we had been having a talk several times.

Q. And you had made several propositions and received some from Crooks, had you not?

Complainant objects as not proper cross-examination and as hearsay.

A. Yes; we did.

Q. Now, as a matter of fact, you had made some inquiry in regard to this stock, had you not, before the 17th day of December?

A. Certainly.

Q. And as to the condition of the bank?

A. Yes.

Q. You never had had any conversation with Professor Stuart until about this time, had you?

A. I think once before this.

Q. When was that?

A. I could not give the time.

Q. Was that conversation that you referred to in regard to this transfer the other conversation you say you had with him—that in regard to this transfer or trade with Professor Stuart?

A. I could not tell exactly you know, how many times I saw him, but I know Mr. Stuart came in once and looked over the building.

Q. Did you have any talk with him at that time?

A. I don't think I did.

Q. Then the next time you had a talk with him about the time the trade was consummated?

A. Yes, sir.

Q. And that was after you had these conversations with Crooks?

A. Yes.

Q. And after you had practically agreed upon the terms of bargain and sale?

170 A. No; we had not agreed at that time; the bargain was made with the Professor himself.

Q. You had looked up the bank stock at that time?

A. No; we had spoken about it some.

Q. You did not make any examination of the bank stock up to that time?

A. At the time I saw him? Yes; before that time.

Q. And had received this statement from him concerning which you have testified in your direct examination?

A. Yes.

Q. Did you make inquiries of any other person?

A. No; I think not.

Q. Did you obtain from Bradstreet, of Dun, or either of them about this time a special report upon the condition of this bank?

Complainant objects as incompetent, irrelevant, and immaterial.

A. No.

Q. Did you procure such a report to be made?

A. No.

Q. Did you ask for such a report of either of these agencies at that time?

A. No.

Q. The only persons, then, that you inquired of were Mr. Outcalt and Professor Stuart?

A. Yes, sir.

Q. You relied on what Mr. Outcalt told you, too, didn't you?

A. Yes; certainly I did.

Q. And then you had the conversation you testified to with Professor Stuart, the respondent, after you went to see Mr. Outcalt?

A. Yes, sir.

Q. And you an- he together made the trade?

A. Yes, sir.

Q. He told you a large amount of this stock was in real estate, did he?

A. No; not a large amount; he said some of it.

Q. And for that reason they would probably not be able to declare a dividend that January?

A. He expressed himself so, as if he was anxious to get the dividend himself, but at the same time he was not certain there would be one declared, and we stated that we were entitled to the dividend if there was any, and he expected there would be some, as the undivided profits were $21,000 and something.

171 Q. And you relied upon the statement you had seen published?

A. Yes, sir.

Q. Was the firm of A. T. Gruetter & Company solvent before they made this trade?

A. Yes, sir; they were.

Q. And could have paid their debts?

A. Yes.

Q. You got $19,500 in cash, did you?

A. Yes.

Q. And Professor Stuart assumed $30,000 of your obligations?

A. Yes.

Q. That made $49,500.00?

A. Yes, sir.

Q. And you took the stock at $18,000?

A. Yes, sir.

Q. And your liability would be $15,000, would it not?

A. Yes, sir.

Q. That would be $35,000.00, would it not?

A. Yes, sir; liability.

Q. And he paid you in cash and in discharge of your liabilities $49,500?

A. Yes; but we had about $30,000 or $40,000 more.

Q. Now at the time that this stock was transferred to and delivered to you, you were paid $19,500 in cash, you say?

A. Yes, sir.

Q. And the assessment at that time could only have been $15,000.00?

A. Yes, sir.

Q. Now, if the assessment had been collected at that time—at the moment of the transfer, did you not have $15,000 in cash in your hands?

A. I don't know at the time or not whether I had or not. The most of them were certificates of the Capital National bank.

Q. You collected them afterwards, did you not?

A. Yes, we did.

Q. So they were cash?

A. Yes, sir.

Q. And you had $19,500 from Professor Stuart at the very moment you received the transfer?

A. At the very moment we received them we turned part of them over to the bank for borrowed money and paid for merchandise East with them.

Q. Gruetter & Company had the benefit of it?

A. Yes, sir; certainly.

172 Q. How much stock did the firm of A. T. Gruetter & Company have on hand at the time of this transfer to them by Professor Stuart of this stock?

A. Merchandise?

Q. Yes.

A. About $30,000—a little over.

Q. When was the corporation of the Gruetter & Joers Furniture & Carpet Company organized?

A. It was organized in December, 1892.

Q. What time in December, 1892?

A. I do not remember the date exactly, the preliminaries and all were in December, the corporation commenced, I believe, in January—the 2nd of January.

Q. How was the stock of this corporation paid in?

A. 80 cents on the dollar by whoever bought it.

Q. Who bought or purchased it?

A. Mr. Joers bought some of it, and I bought some of it, and Mr. Lau bought some of it.

Q. How much did Gruetter & Joers buy of it?

A. Each $20,000. $16,000 to be paid in.

Q. Was that paid in?

A. It was paid in merchandise.

Q. $32,000 was paid in by Gruetter & Joers into this corporation?

A. Yes, sir.

Q. How much did Mr. Lau take?

A. $10,000.00.

Q. That corporation was not in existence and operation on the 17th day of December, was it?

A. No.

Q. Did both Gruetter & Joers, composing the firm of A. T. Gruetter & Company, transfer or purchase stock with merchandise belonging to the firm of A. T. Gruetter & Company?

A. Yes, sir.

Q. And that was all the stock they purchased was the stock they purchased in that way?

A. Yes, sir.

Q. And this $19,500 I understand that you received from Professor Stuart, respondent, was used by A. T. Gruetter & Company in liquidating bills of A. T. Gruetter & Company for this merchandise?

A. Yes, sir.

Q. So that really the corporation got the benefit of it to that extent?

A. Yes.

Q. Gruetter & Joers were apparently solvent, were they not, on the 17th day of December, 1892?

173 A. If we collected and sold our stock for what it was worth at regular prices we could pay our debts; yes, sir.

Q. And you would not be insolvent, then, if you had not been disturbed in the ordinary and regular course of business—A. T. Gruetter & Co.?

A. No.

Q. And you have not been disturbed in the ordinary and regular course of business, have you, as you went out of business?

No answer.

Q. Are the debts of A. T. Gruetter & Company discharged?

A. No; I am sorry to say they are not. We intended to sell the bank stock and take the proceeds and discharge them.

Q. How much were the debts of A. T. Gruetter & Company at that time?

A. I could not tell you exactly, but we owed for merchandis- at least $15,000 East, and had to be paid, and then of course we had to pay $1,000 commission to Crooks in making the sale, and we owed considerable for borrowed money to parties in Chicago and the bank here.

Q. Crooks was your agent, was he?

A. We did not hunt him for an agent, but he came and offered himself.

Q. You paid him a commission?

A. Yes.

Q. You accepted the benefit of what he did?

A. Yes, sir.

Q. I understand you to say in your direct examination that if this stock paid out dollar for dollar and you were permitted to conduct your business in the ordinary way, that the firm then would not be insolvent?

A. Considering whether we were liable for the $15,000. If we were not liable for that, of course then we could pay out, but if we were called upon to pay $15,000 we would have been bursted right away.

Q. You were apparently solvent at that time, so far as anybody knew?

A. Yes, sir.

Q. And had stock of about how much?

A. About $30,000.

Q. And an equity in this building worth, you claim, about $37,500?

A. Yes, sir.

Q. Professor Stuart at the time of the trade paid you $19,500 in cash?

A. Yes, sir.

174 Q. You never saw this statement before, that Mr. Lambertson had offered you, did you? You never saw this paper before?

A. No.

Q. You do not know whether this is the published statement or not, do you?

A. Well, I know only by some of the figures.

Q. Now, whether this statement was the same or not would depend largely, would it not, on whether these items were the same, and you could not tell whether it was the same statement?

A. I saw it published in the Journal, and if they are the same this is the same one.

Q. If that was the same you know, and if it is not you don't know?

A. Yes.

Q. There has been no suit brought against you, has there, Mr. Gruetter, to compel payment of this $15,000?

A. If I am right, I am instructed by my attorneys that we are made parties to a suit. Yes; we did get a notice. I have it in the safe.

Q. You got a notice from the receiver, but you have not been sued. Suit has not been brought by the receiver?

A. I think suit has been brought. I have a subpœna there or something, in this suit he has brought against the stockholders.

Q. No other suit than this has been brought?

A. No.

Q. You say, Mr. Gruetter, that you expected to take this $15,000 in bank stock and sell it and pay certain debts?

A. Yes, sir.

Q. Did you have an opportunity to sell a part of that bank stock after you had it?

A. No, sir; not after we had it.

Q. You never had any opportunity after you had the bank stock to sell it or a part of it?

A. No, sir.

Q. You did not receive an offer on $10,000.00 of that stock of $1.10?

A. No, sir; I did not.

Redirect examination.

By Mr. LAMBERTSON:

(—.) Mr. Gruetter, what did you do with the statement or report that you saw in the Journal, of the condition of the Capital National bank on December 9th? Have you got it with you?

175 A. Yes; I know what the statement is.

Q. Have you got it?

A. I have got a copy of it; yes, sir.

Q. Have you got it with you?

A. Yes, sir; this is a copy of it (handing paper to counsel).

Q. Is this a true and correct copy of the statement which you saw in the Journal and which you think was published December 17, 1892?

A. Yes, sir.

Q. And is that the statement about which you talked with the respondent, A. P. S. Stuart?

A. Yes, sir.

Complainant offers in evidence the statement identified by witness, and the same is hereto attached, marked Exhibit 81.

Respondent objects to this offer as immaterial and incompetent.

Q. Mr. Gruetter, can you tell what the liabilities were, at least approximately, if not accurately, of Gruetter & Joers at the time you purchased this stock?

A. Well, what would you want me to include—the mortgage?

(*A.*) Yes; include everything. If you have a memorandum you may refresh your memory from that.

Mr. FLAN-BURG: The respondent asks to be permitted to examine this memorandum and to cross-examine upon it if the witness uses it in answering this question to refresh his memory.

Q. You may answer the question.

—. ——.

(By Mr. FLANSBURG:)

Q. Do you refresh your memory from the memorandum which you took from your pocket a while ago?

Complainant objects to this question being propounded to the witness.

A. No; of course, it would be hard for me to give you the correct figures unless I turned to the books. Of course, I could tell by looking at the books, but as near as I can remember it must be $90,000.00 what we owed.

Q. That includes the mortgage on the building, does it?

A. Yes.

Q. Do you remember how much money you owed the First National bank here?

176 Respondent objects as leading and assuming facts of which there is no proof—as incompetent.

A. $20,000.00.

Q. You owed $15,000.00 for merchandise?

A. Yes.

Q. And $1,000 for commission?

A. Yes.

Q. Was there any more than that?

A. Yes; a good deal more for borrowed money. We owed $7,500 to Louie Meyer at that time.

Q. Were you surety or indorser on any paper which you have since paid?

Respondent objects as leading, calling for a conclusion, assuming facts not proven, and incompetent.

A. I paid $5,000 for my brother-in-law as security.

Q. Were you on that paper at that time?

A. Yes.

Q. Did you have any other bank than the First National bank?

A. Not the bank, it was mostly private parties that we owed.

Recross-examination.

By Mr. FLANSBURG:

Q. Who made this statement for you, Mr. Gruetter?
A. One of our clerks.
Q. What did he make it from?
A. From the journal.
Q. When did he make it?
A. Oh, he made it—I couldn't tell the time—some time ago.
Q. A month ago?
A. Longer ago than that, but I couldn't tell the time.
Q. Was it a year ago?
A. It may be, about.
Q. Do you know whether he copied it correctly or not?
A. Yes, sir; he did.
Q. Did you compare it to see?
A. No.
Q. You only know what he said about it?
A. I knew by some of the items it was correct, and he is very careful.
Q. And that is the reason you knew it was correct?
A. Yes, sir.
Q. You did not compare it yourself?
A. No, sir.
177 Q. You are relying on the fact that he copied it, and he is careful?
A. Yes, sir.
Q. And that is the reason you say it is correct?
A. Yes, sir.
Q. You owed the First National bank $20,000.00?
A. Yes, sir.
Q. What was that indebtedness represented by—a note or an open account?
A. Note.
Q. How were those notes signed?
A. A. T. Gruetter & C. F. Joers.
Q. You owed for merchandise $15,000.00 and the firm owed $5,000 commission and you owed Louie Meyer $7,500.00. Who signed for that?
A. A. T. Gruetter and *E.* F. Joers.
Q. Both of you?
A. Yes, sir.
Q. The $5,000 security. That was not signed by the firm, was it?
A. Yes, sir.
Q. The note was signed by A. T. Gruetter and the firm did not get the benefit of it, did it?
A. If there was any benefit I guess they did.

AUGUST THEODORE GRUETTER.

CHARLES F. JOERS, being by me first duly cautioned, examined and solemnly sworn, questioned by Mr. Lambertson, testified as follows:

Q. Are you a member of the firm of Gruetter & Joers?
A. Yes, sir.
Q. Are you acquainted with the respondent here, A. P. S. Stuart?
A. Yes, sir.
Q. How long have you lived in Lincoln?
A. About 20 years.
Q. Do you remember the time when the firm of A. T. Gruetter & Co. purchased the 150 shares of stock in the Capital National bank from Mr. Stuart?
A. Yes, sir.
Q. You may state what conversation was had with Mr. Stuart relative to the purchase of that stock, either with yourself or between Mr. Gruetter and Mr. Stuart which you overheard.
A. Mr. Stuart made a statement of the soundness of the bank. He said that he was offered for the stock $1.25 just a couple of months before.
178 Q. What else did he say about it? What if anything did he say about the condition of the bank?
A. He said that the bank was in a sound (coundition), only that lately the bank examiner had thrown out all the bad paper, to the amount of about $30,000.00, but pretty soon it would be in a better shape because it had a mortgage on a lot of real estate and farm land, and they would realize on that about $14,000.00 soon.
Q. Did he say anything about its paying dividends?
A. Well, the Professor said they would not perhaps pay dividends for the last six months, on account of this bad paper being thrown out, but if there was any dividend that he wanted it, but finally after our having it back and forth he agreed to let us have the dividend for the last six months, to January.
Q. Did you see this published statement in the Lincoln Journal?
A. Yes, sir; Mr. Gruetter brought it down in the morning, early. He generally brought the Journal down in the morning, and we had been waiting for that statement—in fact we had been waiting for several days to look at that.
Q. Did you rely upon the facts set forth in that statement?
A. Yes, sir.
Q. Did you believe them to be true?
A. Yes, sir.
Q. Did you rely upon the statements made to you by Mr. Stuart?
A. Yes, we did, because Mr. Stuart had been interested in the bank for some time, and on the finance committee, and he ought to know how the standing was.
Q. You knew he was chairman of the finance committee of the Capital National bank?
A. Yes, sir.
Q. Did you believe the statements he made to you as to the condition of that bank to be true?

A. Yes, sir.
Q. And you believed it to be a good, safe condition, did you?
A. Yes, sir.
Q. And relied upon his statements?
A. Yes, sir.

Cross-examination.

By Mr. FLANSBURG:

Q. You say you knew he was the chairman of the finance committee?
A. Yes, sir.
Q. How long had you known that?
(—.) We talked about it before, and we believed it.
179 Q. He told you that?
A. I would not swear to that. I don't know whether we learned it from him or from some one else.
Q. So you relied upon this statement?
A. Yes, sir.
Q. And waited for it several days?
A. Yes, sir.
Q. Had you any talk with Mr. Stuart prior to this time in regard to the bank?
A. We had seen Mr. Stuart perhaps three or four times.
Q. Had you seen him prior to the time you received this statement of the condition of the bank?
A. Yes; we saw him a few times.
Q. And talked with him about the condition of the bank?
A. Yes, sir.
Q. And you were waiting for this statement to see if it confirmed what he said?
A. Yes, that was natural, for it was about the time for the statement to come out.
Q. Gruetter & Joers or A. T. Gruetter & Co. still have that bank stock, hav-n't they?
A. Yes, sir.
Q. You never have offered to return it to Professor Stuart, have you?
A. No, sir.
Q. And you have never offered to return him his $19,500?

Complainant objects as incompetent, irrelevant and immaterial, and not proper cross-examination.

A. No, sir.
Q. You still have that?

Complainant objects as not proper cross-examination.

A. Yes, sir.
Q. Where were you when these conversations were had between Professor Stuart and Mr. Gruetter?

A. That was in the office.
Q. Were you there all the time?
A. Mostly.
Q. Did they have any conversation you did not hear?
A. They might have had a few words but most times I was present.
Q. Were you present when the trade was ultimately made?
A. Yes, sir.
Q. You never went with Mr. Gruetter to Mr. Outcalt to see about what the condition of the bank was?
A. No, sir.
180 Q. You relied upon him to do that?
A. Yes.
Q. Professor Stuart wanted the dividend on this stock that it had earned the six months since the payment of the last dividend, the six months which had almost expired at the time the trade was made?
A. Yes, sir.
Q. That was one thing that seemed to stand in the way of the trade for a while, was it not—the dividend? You wanted that and Professor Stuart wanted it?
A. Yes, sir.
Q. And he agreed that you should have it?
A. Yes, sir.
Q. What conversation was this, the first or the last conversation that took place?
A. The last one.

CHARLES F. JOERS.

Witness excused.

Certificate.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, E. J. Hedges, a notary public duly commissioned and qualified for and residing in the county of Lancaster and State of Nebraska, do hereby certify that Kent K. Hayden, Deborah G. King, Henry Gerner, Augustus Theodore Gruetter, and Charles F. Joers were by me first several duly cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed as above set forth were reduced to writing by me, and in the presence of the said witnesses respectively, and were respectively subscribed by the said witnesses in my presence, and were taken in pursuance of the stipulation hereto annexed; that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit.

In witness whereof, I have hereunto set my hand and official seal at Lincoln, Nebraska, this 30th day of March, A. D. 1895.

[SEAL.] E. J. HEDGES,
Notary Public.

My commission expires March 28, 1899.

181 *Costs.*

Swearing five witnesses	$ 50
380 hundred words	76 00
One certificate	25
Express	50
Fees of Kent K. Hayden as witness	1 50
Fees of Deborah G. King as witness	1 50
Fees of Henry Gerner as witness	1 50
Fees of Augustus Theodore Gruetter as witness	1 50
Fees of Charles F. Joers as witness	1 50
	$84 75

Paid by plaintiff.

[SEAL.] E. J. HEDGES,
Notary Public.

My commission expires March 28, 1899.

M. L. Mc. V. H. C. A. R. R.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, } *ss:*

Under the provisions of section 884 of the Revised Statutes of the United States, I, James H. Eckels, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original order for the assessment on the shareholders of the Capital National Bank of Lincoln, Nebraska, made on the 10th day of June, 1893, and of the whole of said original on file and of record in my office.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the Treasury Department, in the city of Washington and District of Columbia, this eighth day of August, A. D. 1893.

[SEAL.] JAMES H. ECKELS,
Comptroller of the Currency.

EXH. 1—E. H.

No. 2988.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, *June* 10, 1893.

In the Matter of "THE CAPITAL NATIONAL BANK OF LINCOLN," NEBRASKA.

To all whom it may concern:

182 Whereas upon a proper accounting by the receiver heretofore appointed to collect the assets of "the Capital National Bank of Lincoln," Nebraska, and upon a valuation of the un-

collected assets remaining in his hands, it appears to my satisfaction that in order to pay the debts of such association it is necessary to enforce the individual liability of the stockholders therefor to the extent hereinafter mentioned, as prescribed by sections 5151 and 5234 of the Revised Statutes of the United States:

Now, therefore, by virtue of the authority vested in me by law, I do hereby make an assessment and requisition upon the shareholders of said Capital National Bank of Lincoln for three hundred thousand dollars, to be paid by them ratably on or before the tenth day of July, 1893; and I hereby make demand upon each and every one of them for one hundred dollars upon each and every share of the capital stock of said association held or owned by them respectively at the time of its failure; and I hereby direct K. K. Hayden, the receiver heretofore appointed, to take all necessary proceedings, by suit or otherwise, to enfore to (*a*) that extent the said individual liability of the said shareholders.

In witness whereof I have hereto set my hand and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this tenth day of June, A. D. 1893.

[SEAL.] JAMES H. ECKELS,
Comptroller of the Currency.

Ex. 2—E. H.

(Copy.)

Certificate No. 36, for 100 shares, issued to A. P. S. Stuart, dated Nov. 1, 1884; transferred from —— ——, dated ——, 188-.

No. original certificate.	No. original shares.	No. of shares transferred.

Received this certificate.....

183 Ex. 3—E. H.

(Copy.)

No. 53, for 50 shares, issued to A. P. S. Stewart, dated July 1, 1886; transferred from —— ——, dated ——, 188–.

No. original certificate.	No. original shares.	No. of shares transferred.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Received this certificate.....

.....

Ex. 4—E. H.

(Copy.)

State of Nebraska.

The Capital National Bank of Lincoln, Neb.

No. 36. 100 shares.

This is to certify that A. P. S. Stewart is entitled to one hundred shares of one hundred dollars each of the capital stock of the Capital National bank transferable only on the books of the bank in person or by attorney on the surrender of this certificate.

[SEAL.] Witness the seal of the bank and the signatures of the president and cashier this 1st day of Nov., A. D. 1884.

R. C. OUTCALT, *Cash'r.*
C. W. MOSHER, *Pres't.*

[Printed across the face:] Cancelled Jan'y 3, 1893; #154 & 155 issued.

Shares $100 each.

For value received, the undersigned hereby sell, assign, and transfer unto —— —— — shares of the Capital National Bank of Lincoln, Nebraska, and do hereby constitute and appoint —— —— my true and lawful attorney (irrecocable) and in my name and behalf to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said bank.

In witness whereof — have hereunto set — hand this — day of ——, 188–.

A. P. S. STUART.

Ex. 5—E. H.

(Copy.)

State of Nebraska.

The Capital National Bank of Lincoln, Neb.

No. 53. 50 shares.

This is to certify that A. P. S. Stuart is entitled to fifty shares of one hundred dollars each of the capital stock of the Capital National bank transferable only on the books of the bank in person or by attorney on the surrender of this certificate.

[SEAL.] Witness the seal of the bank and the signatures of the president and cashier this first day of July, A. D. 1886.

R. C. OUTCALT, *Cash'r.*
C. W. MOSHER, *Pres't.*

[Printed across the face:] Cancelled Jan'y 3, 1893; # 153 issued.

Shares $100 each.

For value received, the undersigned hereby sell, assign, and transfer unto —— —— — shares of the capital stock of the Capital National Bank of Lincoln, Nebraska, and hereby constitute and appoint —— —— my true and lawful attorney irrevocable for and in my name and behalf to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said bank.

In witness whereof — have hereunto set — hand this — day of ——, 188–.

A. P. S. STUART.

Ex. 6—E. H.

(Copy.)

Certificate No. 153, for 50 shares, issued to Gruetter & Joers, dated Jan. 3, 1893; transferred from —— ——, dated July 1st, 1886.

No. original certificate.	No. original shares.	No. of shares transferred.
53	50	50
.....	.....	.....
.....		
.....	.....	.....

Received this certificate .....

.....

185

Ex. 7—E. H.

(Copy.)

Certificate No. 154, for 50 shares, issued to Gruetter & Joers, dated Jan. 3, 1893; transferred from A. P. S. Stuart, dated Nov. 1, 1884.

No. original certificate.	No. original shares.	No. of shares transferred.
36	100	50

....

....

.....

Received this certificate.....

....

Ex. 8—E. H.

(Copy.)

Certificate No. 155, for 50 shares, issued to Gruetter & Joers, dated Jan. 3, 1893; transferred from

.....

Dated.....188..

No. original certificate.	No. original shares.	No. of shares transferred.

....

.. ..

....

....

....

Received this certificate.....

....

186 Ex. 9—E. H. 753.

(Copy.)

A. P. S. Stuart.

1892.				1892.		
84.						
Nov. 1, No. 36	100	10,000		Jan. 3, '93	100	10,000
86.						
July 1, 53	50	5,000		" 3, '93	50	5,000

Ex. 10—E. H. 799.

(Copy.)

Gruetter & Joers.

1893.		
Jan. 3, 153	50	5,000
" 154	50	5,000
" 155	50	5,000

Ex. 11—E. H.

Registry return receipt sent July 7, 1893.
Reg. No. 120 from post-office at Lincoln, Nebr.
*Reg. letter / Reg. †[parcel] } addressed to A. P. S. Stuart.

.....

After obtaining receipt below, the postmaster will mail this card, without cover and without postage, to address on the other side.

Received the above-described registered { *letter. / †[parcel].

(Sender's name on other side.)

Sign on dotted lines to the right. When delivery is made to other than addressee, the name of both addressee and recipient must appear. } A. P. S. Stewart.

.....

When the registered letter or parcel accompany- this card is delivered, the postmaster will require signature to the receipt on the other side, also on his record of registered deliveries, and mail this card without cover to address below.

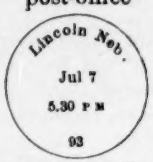
---

* Erase letter or parcel according to which is sent.
† [Word enclosed in brackets erased in copy.]

187 A penalty of $300 is fixed by law for using this card for other than official business.

Post-office Department.

Official business.

Post-office at { Stamp here name of post-office  and date of delivery.

Return to:

Name of sender: K. K. Hayden.

Street and number, or post-office box. .....

Post-office at Lincoln,

County of Lancaster, State of Nebraska.

Treasury Department, office of the Comptroller of the Currency.

WASHINGTON, *June* 10, 1893.

In the Matter of the CAPITAL NATIONAL BANK OF LINCOLN, NEBRASKA.

To all whom it may concern:

Whereas, upon a proper accounting by the receiver heretofore appointed to collect the assets of "The Capital National Bank of Lincoln," Nebraska, and upon a valuation of the uncollected assets remaining in his hands, it appears to my satisfaction, that in order to pay the debts of such association it is necessary to enforce the individual liability of the stockholders therefor to the extent hereinafter mentioned, as prescribed by sections 5151 and 5234 of the Revised Statutes of the United States.

Now, therefore, by virtue of the authority vested in me by law, I do hereby make an assessment and requisition upon the shareholders of the said Capital National Bank of Lincoln for three hundred thousand dollars, to be paid by them ratably on or before the tenth day of July, 1893; and I hereby make demand upon each and every one of them for one hundred dollars upon each and every share of the capital stock of said association held or owned by them, respectively, at the time of its failure; and I hereby direct K. K. Hayden, the receiver heretofore appointed, to take all necessary pro-
188 ceedings, by suit or otherwise, to enforce to that extent the said individual liability of the shareholders.

In witness whereof I have hereto set my hand and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this tenth day of June, A. D. 1893.

[SEAL.] JAMES H. ECKELS,
Comptroller of the Currency.

Ex. 12—E. H.

Office of the receiver of the Capital National Bank of Lincoln, Nebr.

LINCOLN, NEB., *June* 10, 1893.

You will please take notice that the Comptroller of the Currency has levied an assessment upon the stockholders of the Capital National Bank of Lincoln, Nebr., of one hundred dollars ($100.00) a share, payable at the office of the receiver on or before July 10, 1893.

You are therefore requested to pay the amount of your assessment according to the aforesaid notice; otherwise the assessment will bear interest from July 10th, 1893, and suit will be commenced to enforce payment.

—— ——, *Receiver.*

To —— ——.

Ex. 13—E. H.

Copy.

Pages 36 and 37.

Special Meeting.

At a special meeting of directors held May 23, 1884, at office of Marsh National bank, there were present, W. A. Sharrer, E. W. Mosher, R. C. Outcalt, and C. W. Mosher.

On motion of Mr. Outcalt, the name of the bank shall be Cap-
189 ital National bank after May 31st, at close of business on that day, and that out of the undivided profits as shown by books at close of business May 31st $1,500.00 shall be carried to surplus ac. and the balance of profits shall be divided among stockholders in lieu of regular July dividend.

That on June 1st the capital stock of this bank shall be increased to $200,000, and proper notification of same be forwarded to the Comptroller of Currency.

Resignation of C. W. Marsh as vice-pres't having been received, same was accepted, and H. J. Walsh elected to fill the vacant place, to commence at close of business on May 31st, 1884.

The number of directors having been increased to seven, C. E. Yates and E. P. Hamer were elected to make up the number, to commence May 31st, 1884.

Messrs. R. C. Outcalt, C. W. Marsh, E. W. Mosher, W. A. Sharrer, resignation having been handed in, same were accepted, and the names of A. P. S. Stuart, W. W. Holmes, R. O. Phillips, and D. E. Thompson proposed in their places and were duly elected to take office at close of business May 31st, 1884.

Adjourned.

C. W. MOSHER, *P't.*

R. S. OUTCALT, *Sec'y.*

Copy. 40.

Stockholders' Meeting.

At meeting of stockholders held second Tuesday in January of 1885, there *was* present A. P. S. Stuart, W. W. Holmes, R. E. Moore, C. E. Yates, D. E. Thompson, C. W. Mosher, and R. C. Outcalt.

Upon motion of Mr. Stuart the old board of directors were renominated, and, upon vote of stockholders, unanimously elected.

Meeting then adjourned.

C. W. MOSHER, *P't.*
R. C. OUTCALT, *Cash., Sec'y.*

Directors' Meeting.

At meeting of directors held this second Tuesday in January, 1885, present A. P. S. Stuart, W. W. Holmes, C. E. Yates, D. E. Thompson, C. W. Mosher; motion of C. E. Yates was carried to effect,
190 that out of the undivided earnings of the past six months that a dividend of 6½ per cent. be paid, 1 per cent. be carried to surplus, and balance remain in undivided profit ac.

Upon motion of A. P. S. Stuart the old officers were elected.

Meeting adjourned.

C. W. MOSHER, *P't.*
R. C. OUTCALT, *Cash., S'c'y.*

Ex. 14—E. H. 41.

Copy.

Directors' Meeting.

At a regular meeting of directors held this second Tuesday in July, 1885, there *was* present C. W. Mosher, W. W. Holmes, A. P. S. Stuart, C. E. Yates, E. P. Hamer.

Upon motion of W. W. Holmes a dividend of 6½ per cent. was declared, 1 per cent. run to surplus and bal. to remain in undivided profit ac.

Meeting adjourned.

C. W. MOSHER, *P't.*

Stockholders' Meeting.

At a regular meeting of stockholders this second Tuesday in January, 1886, the following were present, W. W. Holmes, A. P. S. Stuart, Geo. Ballentine, C. W. Mosher, R. C. Outcalt.

Upon motion of W. W. Holmes the old board of directors were re-elected.

Meeting adjourned.

C. W. MOSHER, *P't.*
R. C. OUTCALT, *Cash., S'c'y.*

Ex. 15—E. H. 42.

Copy.

Directors' Meeting.

At regular meeting of directors held second Tuesday in January, 1886, present W. W. Holmes, A. P. S. Stuart, C. W. Mosher, R. O. Phillips, C. E. Yates.

191 Upon motion of R. O. Phillips, a dividend of 8 per cent. and 1 per cent. run to surplus was declared.

Meeting adjourned.

C. W. MOSHER, *P't.*
R. C. OUTCALT, *Cash., S'c'y.*

Stockholders' Meeting.

At special meeting of stockholders held June 2, 1886, at office of bank, present C. W. Mosher, R. C. Outcalt, C. E. Yates, H. J. Walsh, A. P. S. Stuart, G. Ballantine, R. E. Moore, D. E. Thompson, W. W. Holmes. Upon motion of H. J. Walsh a resolution was passed asking the comptroller for permission to increase capital stock to $300*,*000 on July 1, 1886. Upon vote it was carried as follows:

C. W. Mosher	600
R. C. Outcalt	330
G. W. Ballantine	100
D. E. Thompson	140
R. E. Moore	10
H. J. Walsh	100
W. W. Holmes	100
A. P. S. Stuart	100
C. E. Yates	50

C. W. MOSHER, *P't.*

R. C. OUTCALT, *Cash., S'c'y.*

Ex. 16—E. H. 43.

Copy.

Directors' Meeting.

At special meeting of directors held June 21, 1886, present R. O. Phillips, W. W. Holmes, A. P. S. Stuart, and C. W. Mosher, a resolution was introduced and upon vote same was carried, to authorize the Comptroller of Currency to transfer the bonds held by him in trust *by him* for the Marsh National bank to the credit and for the use of the Capital National bank.

Meeting adjourned.

C. W. MOSHER, *P't.*

R. S. OUTCALT, *Cash., S'c'y.*

Ex. 17—E. H. 47.

Copy.

Directors' Meeting.

At regular meeting of board of directors held at bank-room on July 13, 1886, there *was* present C. W. Mosher, A. P. S. Stuart, E. P. Hamer, R. O. Phillips, and C. E. Yates.

192 On motion of A. P. S. Stuart it was voted to declare a dividend of 7 per cent. and run 1 per cent. to surplus out of the undivided profits of the bank.

No further business coming before the board, meeting adjourned.

Directors' Meeting.

Special directors' meeting held at office of bank Oct. 15, 1886. Present R. O. Phillips, C. W. Mosher, W. W. Holmes, C. E. Yates.

On motion of R. O. Phillips, the following resolution was passed: "Resolved, That the president of the Capital National bank be authorized to indorse the notes and bills discount of said bank, when it may become necessary to rediscount the same."

No further business coming before the meeting, they adjourned.

C. W. MOSHER, *P't.*
R. C. OUTCALT, *S'c'y.*

Ex. 18—E. H. 50.

Copy.

Directors' Meeting.

At regular meeting of directors held at office of bank there *was* present on July 12, 1887, A. P. S. Stuart, C. W. Mosher, D. E. Thompson, E. P. Hamer. Upon motion of D. E. Thompson a dividend of 6 per cent. was declared & $2,000 ordered put to surplus. A. P. S. Stuart made motion that J. W. Maxwell be made ass't cashier.

Meeting adjourned.

C. W. MOSHER, *P't.*
R. C. OUTCALT, *S'c'y.*

Ex. 19—E. H. 51.

Copy.

Stockholders' Meeting.

At annual meeting of stockholders there *was* present on Jan. 10, 1888.

193

A. P. S. Stuart	150	shares
D. E. Thompson	230	"
R. C. Outcalt	350	"
H. J. Walsh	150	"
R. O. Phillips	150	"
C. W. Mosher	550	"

Upon motion of Mr. D. E. Thompson the sec'y was instructed to cast ballot for re-election of the old board of directors.

Motion of R. O. Phillips, meeting adjourned.

C. W. MOSHER, *P't.*
R. C. OUTCALT, *S'c'y.*

Ex. 20—E. H. 52.

Copy.

Directors' Meeting.

At regular meeting of directors held at 8 p. m. Jan. 10, 1888, there were present A. P. S. Stuart, R. O. Phillips, C. E. Yates, C. W. Mosher, D. E. Thompson.

Upon motion of Mr. D. E. Thompson the by-laws were amended to read as follows:

Section 14, line 5, erase April and October.

Section 17 amended to read:

"No money shall be paid out on any check drawn upon the bank or on any order unless the drawer of such check or order at the time of the presentation thereof had on deposit in the bank funds sufficient to meet such check or order, except on the approval of the president or cashier."

Motion unanimously carried.

There being a net profit on the business of last six months of 20,024.41, upon motion — R. O. Phillips a dividend of 6 per cent. was declared & $2,000 carried to surplus.

Meeting adjourned.

C. W. MOSHER, *P't.*

R. C. OUTCALT, *S'c'y.*

194 Ex. 21—E. H. 53.

Copy.

Directors' Meeting.

At regular meeting of board of directors held on July 10, 1888, A. P. S. Stuart, C. W. Mosher, W. W. Holmes, E. P. Hamer present.

Upon motion of E. P. Hamer, a dividend of 6 per cent. was declared & $2,000 carried to surplus.

Meeting adjourned.

C. W. MOSHER, *P't.*
R. C. OUTCALT, *S'c'y.*

Ex. 22—E. H. 54.

Copy.

Stockholders' Meeting.

At meeting of stockholders held at office of bank on Jan. 8, '89, at 8 o'clock, there *was* present—

D. E. Thompson	230	shares
C. E. Yates	103	"
A. P. S. Stuart	150	"
W. W. Holmes	150	"
R. C. Outcalt	350	"
H. J. Walsh	150	"
H. Gerner	50	"
C. W. Mosher	550	"
J. McConniff	37	"
C. Thompson	50	"
	1,820	

On motion of Mr. Yates the sec'y was instructed to cast the ballot for directors the ensuing years as follows:

C. W. Mosher, A. P. S. Stuart,
D. E. Thompson, R. O. Phillips,
W. W. Holmes, C. E. Yates.
E. P. Hamer,

Motion of A. P. S. Stuart, meeting adjourned.

C. W. MOSHER, *P't.*
R. C. OUTCALT, *S'c'y.*

195 Ex. 23—E. H. 55.

Copy.

Directors' Meeting.

On motion of Mr. Thompson the old officers were elected to serve for the ensuing year.

Mr. Thompson moved that Directors Holmes & Stuart be appointed a committee to examine the notes of the bank, & also to make as many such examinations of notes & books as they may see fit.

The earnings of the bank for the last six months showing net earnings of	20,572	74
Undivided profits	305	12
	20,877	86

On motion of Mr. Yates a dividend of 6 per cent. was declared payable at once & $2,000 carried to surplus fund.

Meeting adjourned.

C. W. MOSHER, *P't.*
R. C. OUTCALT, *S'c'y.*

Ex. 24—E. H.

Copy.

LINCOLN, NEB., *Jan.* 20, 1889.

As per instructions of the board of directors, we have examined paper of Capital National bank & find same satisfactory.

W. W. HOLMES.
A. P. S. STUART.

Copy. 56.

Directors' Meeting.

At regular meeting of directors held at office of bank at 8 o'clock p. m., July 9, 1889, there *was* present A. P. S. Stuart, W. W. Holmes, D. E. Thompson, C. E. Yates, & C. W. Mosher.

The earnings of the bank showing as follows:

Net earnings & undivided profits $20,598 38

196 Upon motion of Mr. Stuart & seconded by D. E. Thompson a dividend of six per cent. was declared & $2,000 run to surplus.

Upon motion of C. E. Yates meeting adjourned.

C. W. MOSHER, *P't.*
R. C. OUTCALT, *S'c'y.*

Ex. 26—E. H.

Stockholders' Meeting.

At regular annual meeting of stockholders held at office of bank at 8 o'clock Jan. 14, 1890—

It was moved by Mr. Stuart to increase the number of directors from seven to nine, and that the sec'y be authorized to cast the vote of stockholders for directors for ensuing year—with the result that A. P. S. Stuart, E. P. Hamer, H. J. Walsh, R. O. Phillips, D. E. Thompson, W. W. Holmes, C. E. Yates, R. C. Outcalt & C. W. Mosher were elected.

The number of shares of stock being present & voted as follows:

G. W. Ballantine	200
E. P. Hamer	75
W. W. Holmes	150
A. P. S. Stuart	150
R. O. Phillips	100
R. C. Outcalt	350
C. W. Mosher	550
	1,575

Upon motion of Mr. Outcalt meeting adjourned.

C. W. MOSHER, *P't.*

Ex. 27—E. H. 59.

Copy.

Directors' Meeting.

Regular meeting of directors held at office of bank July 11, 1890. There *was* present R. O. Phillips, C. E. Yates, W. W. Holmes, A. P. S. Stuart, C. W. Mosher.

The earnings of the bank showing as follows:

197 Net earnings & profits $17,500.19.

It was moved by A. P. S. Stuart that a dividend of 5 per cent. be declared & $2,000 added to surplus.

Upon motion of C. E. Yates meeting adjourned.

C. W. MOSHER, *P't.*

Ex. 28—E. H. 60.

Copy.

Stockholders' Meeting.

At regular annual stockholders' meeting held Jan. 13, 1891, at 7.30, at office of bank, there *was* present:

C. E. Yates	113 shares.
D. E. Thompson	250 "
A. P. S. Stuart	150 "
C. Hammond	50 shares.
E. P. Hamer	75 "
R. C. Outcalt	350 "
C. W. Mosher	550 "
	1,688 "

Upon motion of C. Hammond the sec'y was authorized to cast the vote for old directors. So done.

Upon motion of D. E. Thompson meeting adjourned.

C. W. MOSHER, *P't.*

Ex. 29—E. H. 61.

Copy.

Directors' Meeting.

At regular meeting of directors held at office of bank on Jan. 31, '91, at 8.30, there *was* present C. E. Yates, D. E. Thompson, W. W. Holmes, A. P. S. Stuart, *W. W. Holmes*, & C. W. Mosher.

It was moved by C. E. Yates that all the old officers be elected for ensuing year; which motion was unanimously carried.

A. P. S. Stuart moved and it was carried that a dividend of 5 per cent. be declared & $2,000 run to surplus and out of the $17,167.11 of undivided profits on hand.

C. W. MOSHER, *P't.*

198 Ex. 30—E. H. 62.

Copy.

Directors' Meeting.

At regular meeting of board of directors held at office of bank July 13, 1891, at 8 o'clock, there were present C. E. Yates, E. P. Hamer, D. E. Thompson, R. O. Phillips, C. W. Mosher—the books showing the following earnings & expenditures:

Left over from Jan. 1, '91		162 11
Gross earnings to July 1, '91		37,878 65
		38,040 76
Wages paid	6,644 98	
Int. "	8,943 71	
Expenses "	5,198 28	
		20,786 97
Net earnings		17,253 79

It was moved by R. O. Phillips that a dividend of 5 per cent. be declared & 2,000 run to surplus. A. P. S. Stuart moved that R. C. Outcalt be elected to fill the vacancy caused by the death of W. W. Holmes. Motion was seconded by E. P. Hamer and was unanimously carried.

Moved and carried by R. O. Phillips that Oscar Funke be authorized to sign d'fts for cashier until further notice.

Ex. 31—E. H. 63.

Copy.

Upon motion of D. E. Thompson, it was resolved as follows: That the Comptroller of Currency be and he is hereby authorized to withdraw $50,000 U. S. bonds deposited with the Treasurer of the U. S. by this bank to secure circulation and described as follows:

$50,000 of the loan 1891, 4½ per cent. interest, and that the Chemical Nat. bank be and is hereby authorized to sell, assign and transfer the same and to appoint one or more att'ys for that purpose.

Upon motion of Mr. A. P. S. Stuart & seconded by all present, the following resolution was unanimously adopted & a written copy ordered for purpose of delivering to the family of Mr. Holmes:

199

Upon motion of C. E. Yates meeting adjourned.

C. W. MOSHER, *P't.*

Ex. 32—E. H. 64.

Copy.

Stockholders' Meeting.

Held Jan. 12, 1892, at office of bank, at 8 o'clock; there *was* present the following stock:

C. E. Yates	113 s.
C. Thompson	50 s.
R. O. Phillips	50 s.
C. W. Mosher	550 s.
R. C. Outcalt	350 s.
H. Gerner	100 s.
J. K. Honeywell	50 s.
A. P. S. Stuart	150 s.
H. J. Walsh	150 s.
	1,563 s.

Mr. Stuart moved that old board of directors be declared re-elected for ensuing year.

Mr. Honeywell moved to adjourn, which was carried

C. W. MOSHER, *P't.*

Ex. 33—E. H. 65.

Copy.

Directors' Meeting, Held Jan. 12, 1892.

There *was* present A. P. S. Stuart, C. E. Yates, C. W. Mosher, R. O. Phillips, R. C. Outcalt.

Upon report of pres't that there was 18,128.02 net profits, it was moved and carried to declare a 5 per cent. dividend, run $2,000 to surplus & leave remainder in undivided profits.

Upon motion of Mr. Stuart the old officers were elected unanimously.

Meeting adjourned.

C. W. MOSHER, *P't.*

200 Ex. 34—E. H. 66.

Copy.

Directors' Meeting.

Held at office of bank July 12, '92, at 8 o'clock; present, R. O. Phillips, A. P. S. Stuart, E. P. Hamer, C. W. Mosher, C. E. Yates.

Upon report of president that there had been earned net in previous six months $14,026.81, it was moved & seconded that a dividend of 4 per cent. be declared & 2,000 added to surplus ac.

Meeting adjourned.

C. W. MOSHER, *P't.*

Ex. 35—E. H. 67.

Copy.

Directors' Meeting.

At special meeting of directors, held Feb. 20, '92, there *was* present A. P. S. Stuart, E. P. Hamer, C. E. Yates, D. E. Thompson, R. O. Phillips, R. C. Outcalt, C. W. Mosher.

Upon motion of Mr. D. E. Thompson, E. P. Hamer was put upon the discount committee in place of W. W. Holmes, deceased.

Under date of Feb. 16, '92, a communication was received from the comptroller regarding some matters pertaining to the bank's affairs, & a full, explicit reply was made thereto, under date of Feb. 20, '92, & signed by each director.

After further discussion of the affairs of the bank meeting adjourned.

C. W. MOSHER, *P't.*

Ex. 36—E. H.

C. W. Mosher, pres't; H. J. Walsh, vice-pres't; R. C. Outcalt, cashier

Capital National bank.

Capital, $300,000.

LINCOLN, NEB., *Jan.* 22, 1893.

Copy.

Special meeting of directors of bank, held at 3 o'clock Jan. 22, '93.

201 Present: Walsh, Hamer, Outcalt, Yates, Mosher.

Upon motion of Mr. Yates it was resolved to turn the bank over into the hands of the Comptroller of Currency & seconded by Mr. Hamer.

Upon motion of Walsh meeting adjourned.

C. W. MOSHER, *P't.*

Ex. 37—E. H.

Ex. 38—E. H.

519,600.00

Bills Receivable of the Capital National Bank.

		Good.	Doubtful.	Worthless.
131174	Altschuler, Alex.....	500 00		
132011	Ayers, F. J., & Co.....	.....	651 30	
133051	Anderson, Enoch.....	.....	40 00	
133028	Abbott & Baurmister...	200 00		
133016	Anderson, Wm.....	.....	251 94	
46757	Allen, Andrew...	.....	330 00	

		Good.	Doubtful.	Worthless.
122000	Allemand, A.....	162 50		
135007	Ayers, F. J., & Co.....	.....	126 00	
131050	Bowerman, Geo. E.....	.....	.....	400 00
131200	Bell, O. C.....	1,000 00		
131183	Brooks, L. P.....	20 00		
131120	Blomstrum, L. O.....	125 00		
131128	Beckman, F., & Co.....	150 00		
132143	Bayard & Guerin.....	60 20		
132059	Bowers, Annie E.....	100 00		
132063	Boetcher, Wm.....	100 00		
132069	Bent, O. W..	200 00		
132118	Birdsall, E. H.	150 00		
132025	Becker, E. A.....	50 00		
132002	Brady, Wm.....	.....	170 60	
132108	Bayard & Guerin... ...	78 90		
133026	Bun, D..... ..	.....	20 00	
133023	Blomstrum, Nels.....	100 00		
133077	Birdsall, E. H.....	150 00		
133085	Beardsley, S. W.....	.....	100 00	
133027	Brownell, S.....	200 00		
133043	Briggs, J. H.....	100 00		
134027	Bates, Herbert...	150 00		
134024	Briggs, Thos.....	100 00		
134060	Barron & Brdsky.....	100 00		
202				
134074	Barron, Jno. M.....	100 00		
134031	Bushboom, A.....	100 00		
1039	Brantz, Annie C.....	170 87		
50156	Bill, C. C.....	2,000 00		
131119	Blonstrum, Nels.....	70 00		
122009	Cotton, Jno. M...	.....	. ....	150 00
131191	Com'l State bank.....	2,000 00		
131154	Crandall, C. N.....	206 00		
131098	Cobb, M. M.....	300 00		
132058	Chappell, I. W.....	100 00		
132046	Castor, J. W.....	100 00		
132083	Carlson, Jno. C...	70 00		
132109	Calkins, C. C.....	60 00		
132086	Cook, Tom M.....	.....	100 00	
132092	Cook, Tom M.....	100 00		
132095	Carpenter, C. M.....	150 00		
132049	Chester, Emma.....	.....	40 00	
132145	Carter, J. O.....	140 00		
153036	Courtright, L. J.....	.....	80 00	
133030	Clark, J. H.	125 00		
133088	Culbertson, G. J.....	125 00		
133060	Coppinger, Thos.... ...	100 00		
133125	Sarothers, T. A..	300 00		

		Good.	Doubtful.	Worthless.
131131	Caldwell, Jas. L.....	.....	50 00	
113033	Crampton, D. J.....	35 00		
134034	Carpenter & Beelsfeldt..	200 00		
134065	Camp Bros.....	250 00		
134048	Chapin, E. H.....	25 00		
133010	Courtney, D. G.....	450 00		
121164	Dyer, Carl.....	53 73		
132068	Davis, O. P.....	200 00		
133124	Dennis, W. R., & Co....	300 00		
134075	Dee, John.....	50 00		
134053	Dullentry, M.....	100 00		
134079	Dennis, W. R., & Co....	1,000 00		
132029	Eddy, A....	200 00		
132140	Erskine, H. N.....	100 00		
133082	Ensign, F. W.....	50 00		
134055	Emerson, H.	500 00		
134041	Evarts, Frank L.....	200 00		
134080	Ensign, Gran.....	5,000 00		
134076	Ensign, Gran.....	1,500 00		
132107	Farr, W. H.....	30 00		
133053	Ferris, J. E.....	50 00		
133017	Furr, C. S.....	150 00		
133072	Funck, I. W.....	125 00		
203				
134036	Flynn, Mary..	200 00		
134073	Fury, Chas.....	.....	60 00	
1241	Frank, Lizzie K.....	456 00		
1242	Frank, Lizzie K	438 00		
1243	Frank, Lizzie K.....	520 00		
135009	Furr, C. S.....	100 00		
50158	Funke, Rosa.....	600 00		
131188	Greenameyer, A.....	20 00		
131158	Graham, D. L.....	50 00		
132017	Goldwater, H.....	150 00		
132067	Gates, O. C..... ...	100 00		
132099	Gleeson, A. L...	.....	100 00	
132134	Gruetter, A. T., & Co....	333 15		
133055	Greenameyer, Geo.....	75 00		
133052	Gillespie, E. B.....	30 00		
133092	George, J. W.....	.....	100 00	
134071	Greenameyer, Geo. W..	75 00		
134050	Gesford, E. K..... .	35 00		
134042	Gould, S. L.....	50 00		
132123	Greenameyer, A.....	50 00		
122060	Hamilton, W. S... ...	.....	250 00	
122143	Houtz, W. H..... ...	10 00		
2024	Hurlbutt, E., Sr.....	53 75		
131102	Hawley, C. G...	150 00		
131190	Humphrey, A. R.....	125 00		

		Good.	Doubtful.	Worthless.
131096	Hargreaves, W. B.....	200 00		
131187	Hale, James B.....	1,050 00		
132138	Hopkins, Dan.....	240 00		
132061	Horton, A. J.....	30 00		
132097	Humphrey, A. R.....	50 00		
132147	Honeywell, J. K.....	1,000 00		
133031	Higgins, Jno. P.....	83 00		
133076	Hohmann, Paul C.....	.....	30 00	
133024	Hammell, Zack.....	200 00		
133025	Hosford, F. M.....	100 00		
133029	Hollowell, Joseph.....	.....	120 00	
133044	Hadley, J. J.....	100 00		
133074	Hyde, Thos. H.....	75 00		
133081	Hyde, E. B.....	.....	150 00	
134031	Hosford, F. M.....	100 00		
134068	Hall, Chas. L.....	1,000 00		
134064	Hammell, Zack.....	500 00		
134031	Howe, Church.....	500 00		
134078	Hammell, Zack.....	200 00		
136011	Harris, J. W.....	.....	1,891 50	
204				
135008	Hopkins, Wm.....	50 00		
50124	Hill, J. E	5,000 00		
131094	Harrison, Joseph.....	40 00		
120104	Jones, S. S.....	65 00		
131090	Johnson, G. A. L.....	100 00		
132043	Johnson, I. H.	150 00		
132115	Johnson, T. H.....	114 77		
132134	Johnson, J. C.....	50 00		
133049	Johnson, John.....	100 00		
133106	Jordan, J. W.....	.....	100 00	
134069	Johnson, J. C.....	200 00		
134030	Jobson, B.....	20 00		
132050	Johnson, I. E., & Co....	24 34		
131173	Keel, H. W.....	50 00		
131148	Klausner, John.....	50 00		
132060	Knowlton, C. M.....	75 00		
132112	Kleutsch, J. D.....	150 00		
133103	Kelsey, Jno. W.....	100 00		
134019	Kirkpatrick, W. C.....	100 00		
134001	Kelso, Clara J.....	200 00		
50133	Kelly, James.....	50 00		
132032	Lickliter, Jno. W.....	50 00		
132071	Love, Will. H.....	200 00		
132074	Lowrey, T. B.....	100 00		
132087	Leavitt.....	150 00		
132090	Leese, Walter A.....	100 00		
132023	Lehman, J. M.....	25 00		
133035	Link, C. F.....	125 00		

		Good.	Doubtful.	Worthless.
133068	Lehman, J. M.....	100 00		
133101	Laws, G. L.....	200 00		
134020	Lane, W. C.....	.....	100 00	
134028	Lane, W. C.....	.....	200 00	
134044	Leavitt, L.....	100 00		
131132	Latham, John W.....	.....	.....	2,028 00
120010	Maul, Jno. P...	77 30		
121001	Miller, J. C.....	100 00		
131185	Moore, S. E.....	500 00		
131151	McBrien, Wm....	100 00		
132054	Meyers, Hermann H...	.....	150 00	
132039	McNeal, B. F.....	200 00		
132123	Meese & Doran.....	100 00		
132136	McIntosh, Jno....	200 00		
133104	Manchester, A. L.....	50 00		
133116	Meyer, L. H.....	100 00		
134018	Miller, C. H.....	100 00		
205				
134077	Magoon, Chas. E.....	700 00		
132026	Owen, F. J..... ...	150 00		
132015	Odbert, J. A....	250 00		
133079	O'Connell, John... ...	50 00		
134045	O'Connell, John.....	100 00		
134025	Orcutt, J. E...	150 00		
135000	Opp, Phillip.....	250 00		
50640	Outcalt, R. C.....	.....	... ..	$15,000
50639	Outcalt, R. C....	.....	... ..	12,500
50649	Outcalt, R. C.....	.....	.....	14,166 66
50630	Outcalt, R. C.....	.....	.....	6,240 00
50629	Price, W. C.....	.....	50 00	
132042	Paine, Phelps.....	50 00		
132030	Parke, C. M.....	150 00		
132125	Preston, A. G.....	200 00		
132070	Paine, Phelps.....	75 00		
133113	Pound, A. L.....	50 00		
1225	Price, Wm....	.....	250 00	
1226	Price, Wm.....	.....	260 00	
122136	Roose, F. F.....	224 05		
122110	Rickner, E. A.....	50 00		
131135	Reilly, Sarah C.... ...	75 00		
133069	Rinesmith, J. A.... ..	35 00		
133057	Roberts, W. G.....	125 00		
133118	Eitchey, I. P....	125 00		
134052	Reed, James.....	50 00		
136004	Reed, James.....	50 00		
135003	Rivetts, R..... .	100 00		
131067	Schmidt, Herman.....	75 00		
131150	Scanlan, J. M.....	.....	200 00	
131101	Scott, H. M.....	75 00		

		Good.	Doubtful.	Worthless.
131081	Stuart, J. M.....	150 00		
131063	Schweiger, F.....	160 00		
131121	Sickle, B.....	35 00		
132038	Safford, H. F.....	.....	200 00	
132103	Smith, Alva.....	.....	210 00	
132105	Skinner, Geo. B.....	200 00		
132035	Smith, Geo..... ...	100 00		
132057	Safford, H. F.	... ..	100 00	
133047	Schoenverg, A.....	50 00		
133102	Smith, Geo.....	50 00		
133039	Swan, Joseph.....	.....	.....	100 00
133062	Swan, Joseph.....	.....	.....	100 00
133073	Speltz, Jno. R...	100 00		
206				
133080	Stanton, David...	150 00		
133089	Sipp, Andrew...	200 00		
133110	Smith, James W.....	200 00		
134066	Spelts, Jno. R.....	44 00		
134049	Safford, H. F.....	... ..	150 00	
134070	Sansom, A. R.....	200 00		
131104	Scott, Milton.....	75 00		
122088	Tuttle, S. J.....	100 00		
131164	Tuttle, S. J.....	100 00		
132064	Townley, R. H.... ...	250 00		
133046	Thompson, F. D.....	100 00		
134035	Taylor, G. B.....	200 00		
134022	Tyler, James, Jr.....	44 00		
132146	Vpham, Lillian.....	30 00		
132101	Van Buskirk, J. R.....	190 07		
134026	Vogt, A.....	200 00		
117135	Wynn, W. S.....	.....	100 00	
131181	White, F. L.....	.....	50 00	
131137	Waters, F. R.....	.....	56 25	
131106	Waters, Frank R.....	.....	230 00	
134044	Witsel, Geo.....	.. ..	50 00	
132031	Westcott, M. H.....	100 00		
133078	Wenzel, W. J.....	30 00		
133020	Whitehead, Rich'd.....	100 00		
133126	Waggoner, J. A.....	25 00		
133128	Whedon, Chas. O.....	300 00		
134058	Waters, F. R.....	.....	50 00	
134059	Waters, F. R.....	.....	50 00	
134072	Watson, J. A.....	200 00		
122031	Whitmore, J. A.....	... ..	622 95	
135001	Wiltsee, O. E.....	.....	175 00	
133091	Young, Sam'l.....	125 00		
122138	Bowerman, G. E.....	.....	.....	100 33
132141	Betts, Bert E..... .	.....	65 00	
46736	Bailey, Jas. A.....	.....	.....	50 00

		Good.	Doubtful.	Worthless.
1252	Bellairs, G. V.	120 00		
1262	Bernard, Chas. F.			300 00
1263	Bernard, Chas. F.			150 00
1264	Bernard, Chas. F.			150 00
1265	Bernard, Chas. F.			150 00
1266	Bernard, Chas. F.			150 00
1267	Bernard, Chas. F.			150 00
1268	Bernard, Chas. F.			150 00
1269	Bernard, Chas. F.			150 00
1270	Bernard, Chas. F.			150 00
1272	Bernard, Chas. F.			150 00
1273	Bernard, Chas. F.			200 00
122008	Cook, Tom M.		250 00	
207				
1260	Caywood, Jas.		50 00	
1164	Clabby, C. A.		75 35	
1248	Collins, J. S.	216 00		
1249	Collins, J. S.	232 00		
4621	Cunningham, Ed		64 00	
2020	Drath, L.		70 00	
2021	Drath, L.		70 00	
1229	Evert-, Geo. K.		300 00	
1230	Everts, Geo. K.		200 00	
1228	Everts, Geo. K.		200 00	
1231	Everts, Geo. K.		300 00	
132053	Fisher, Annie R.	225 00		
133038	Fawell, J. H.		150 00	
133119	Fraser, Rellah		153 90	
4617	Farrell, E.	17 00		
132102	Gilbraith, F. H.	100 00		
133022	Grimes, H. H.		50 00	
134061	Gillespie, Sarah D.	30 00		
134054	Gardner, W. A.		250 00	
132131	Hawley, C. G.		500 00	
133130	Hood, J. D.		500 00	
2077	Hess, G. J.		407 06	
2067	Hess, G. J.		353 97	
2079	Hidebaugh, G. W.		380 03	
4618	Harder, John	20 00		
2068	Hess, G. J.		363 98	
2019	Jordan, J. C.		243 76	
3139	Johnson, Jno. S.	110 00		
1232	Johnson, Jno. A.		100 00	
1236	Johnson, Jno. A.		100 00	
1234	Johnson, Jno. A.		136 00	
1235	Johnson, Jno. A.		100 00	
1236	Johnson, Jno. A.		100 00	
1237	Johnson, Jno. A.		100 00	
1238	Johnson, Jno. A.		100 00	

		Good.	Doubtful.	Worthless.
1239	Johnson, Jno. A.....	.....	1,100 00	
1222	Kline, Sam'l C.....	453 50		
4612	Kleim, Chas.....	... ..	35 00	
3137	Keedle, T. B...	.....	242 75	
4616	Kelley, Jno. P.	41 00		
39167	Marsh & Hinds	.....	1,000 00	
120142	Morrissey, Frank R. ..	.....	50 00	
121044	Morrisey, Frank R.....	.....	50 00	
50632	Mosher, C. W....	.....	1,000 00	
2069	Miller Bros.....	.....	229 83	
208				
132000	Mosher, C. W.....	.....	.....	1,948 33
132072	Meyer, H. M.....	.....	150 00	
132110	Maxon, J. K.....	35 00		
133048	Mauritius, M. B.....	.....	100 00	
133070	Martin, D.....	.....	103 40	
1257	Mustain, T. C.....	... ..	250 00	
50633	Mosher, C. W.....	.....	.....	5,000 00
95021	Marshall, Elliot.....	.....	5,832 00	
50636	Mosher & Outcalt	.....	.....	5,635 00
50637	Mosher, C. W.....	.....	.....	5,000 00
50644	Mosher, C. W.....	.....	.....	5,000 00
46448	Miller Bros.....	.....	.....	229 83
2070	Miller Bros..... ...	.....	.....	229 83
50642	Mosher, C. W.....	.....	.....	20,000 00
50643	Mosher, C. W.....	.....	... ..	20,833 34
50638	Mosher, C. W.....	... ..	.....	17,500 00
134014	Marsh, James.....	... ..	.....	200 00
46756	Opelt, Alfred	.....	60 00	
122100	Palmer, A. Z..... .	.....	.....	55 00
131068	Palmer, A. Z.....	. ....	.....	100 00
13110	Pardee, James B.....	.....	100 00	
132075	Roberts, W. G...	200 00		
1261	Russell, A. C.....	100 00		
135004	Redding, M. A.....	50 00		
1259	Rider, Jno. W.....	... ..	80 00	
1258	Rider, Jno. W.....	.....	50 00	
2018	Sloan, W. T.....	.....	233 35	
2013	Smith, J. V.	.....	105 15	
2078	Sloan, W. T.....	.....	436 48	
4620	Silvers, C.....	18 00		
46735	Scott, Mary C..... .	... ..	.....	6,500 00
46734	Scott, Mary C.....	.....	.....	6,500 00
4619	Schall, Lewis	115 00		
3136	Sorenson, Jens	150 00		
3135	Tipton, E. P..... ..	.....	58 00	
3136	Tipton, E. P.....	... ..	73 00	
133127	Vaughn, W. R.....	.....	.....	80 00
2081	Wheeler, Wallace	.....	.....	891 33

		Good.	Doubtful.	Worthless.
131092	Yeoman, B. C.		38 20	
120081	Askin, H.			100 00
116078	Barstow, W. H.			50 00
116107	Barstow, W. H.			100 00
132019	Beahm, A. W.			65 00
39139	Bond, M. Isabella			291 35
1165	Barstow, W. H.	1,508 00		
1199	Barstow, W. H.			1,130 75
117001	Cameron, A. T.			603 80
209				
133050	Darnell, J.			51 50
80047	Edwards, J. M.			75 50
2074	Echart, Jno. A.			150 00
111053	Falkenberg, F. A.			2,041 00
1240	Frank, M. C.			2,120 00
2073	Grieb, H. L			37 50
91106	Haber, Jno. H.			70 00
120109	Hefner, O. O.			1,300 00
120141	McKeighan, W. A.			200 00
2072	McGee, M. F.			75 00
122011	March, C. W. & W. W.			3,600 00
122012	Marsh Binder Mfg. Co.			9,000 00
131000	Mosher, E. W.		5,000	
131001	Mosher, E. W.		5,000	
131002	Mosher, E. W.		5,000	
131003	Mosher, E. W.		5,000	
1221	Meagher, Mary A.			250 00
134007	Mosher, E. W.		12,730 01	
134008	Mosher, E. W.		10,600 00	
134009	Mosher, E. W.		8,611 20	
134010	Mosher, E. W.		5,000 00	
134011	Mosher, E. W.		5,000 00	
136005	Mosher, E. W.		2,500 00	
1220	Meagher, Mary A.			4,301 40
50101	Mosher, E. W.		5,903 77	
50102	Mosher, E. W.		5,505 68	
50103	Mosher, E. W.		5,623 70	
50104	Mosher, E. W.		4,307 28	
50105	Mosher, E. W.		2,458 77	
50106	Mosher, E. W.		6,000 00	
50108	Mosher, E. W.		6,881 18	
50109	Mosher, E. W.		5,963 86	
1183	Nixon, Eli			137 81
1184	Nixon, Eli			175 41
1185	Nixon, Eli			331 21
1186	Nixon, Eli			438 00
39162	Pratt, W. J.			42 00
39173	Pratt, W. J.			50 00
131022	Roose, F. F.			500 00

		Good.	Doubtful.	Worthless.
122010	Sycamore Marsh Harvester Co.	.....	.....	4,500 00
131141	Sharrar, W. A.	.....	.....	50 00
132014	Smith, O. C.	.....	.....	105 90
46665	Sharrar, W. A.	.....	.....	7,103 76
210				
122015	Furk, C. E.	.....	.....	7,289 10
132094	Thayer, Jno. M., Jr.	.....	.....	150 00
131160	Thayer, Jno. M.	.....	.....	2,228 43
122018	Western Mfg. Co.	.....	.....	5,000 00
122016	Western Mfg. Co.	.....	.....	5,000 00
131017	Western Mfg. Co	.....	.....	5,000 00
132012	Western Mfg. Co.	.....	.....	5,000 00
132009	Western Mfg. Co.	.....	.....	5,000 00
132009	Western Mfg. Co.	.....	.....	5,000 00
132010	Western Mfg. Co.	.....	.....	5,000 00
133009	Western Mfg. Co.	.....	.....	5,000 00
133011	Western Mfg. Co.	.....	.....	5,000 00
	Ex. 39—E. H.			
133012	Western Mfg. Co.	.....	.....	5,000 00
133013	Western Mfg. Co.	.....	.....	5,000 00
133015	Western Mfg. Co.	.....	.....	5,000 00
134002	Western Mfg. Co.	.....	.....	5,000 00
134040	Western Mfg. Co.	.....	.....	5,000 00
130439	Western Mfg. Co.	.....	.....	5,000 00
134038	Western Mfg. Co.	.....	.....	5,000 00
136000	Western Mfg. Co.	.....	.....	5,000 00
136001	Western Mfg. Co.	.....	.....	5,000 00
136002	Western Mfg. Co.	.....	.....	5,000 00
136003	Western Mfg. Co.	.....	.....	5,000 00
136008	Western Mfg. Co.	.....	.....	5,000 00
136010	Western Mfg. Co.	.....	.....	5,000 00
137002	Western Mfg. Co.	.....	.....	5,000 00
137001	Western Mfg. Co.	.....	.....	5,000 00
137003	Western Mfg. Co.	.....	.....	5,000 00
		49,665 06	141,311 27	328,543 67

$141,011.44, bills receivable.

Bills Receivable of the Capital National Bank, Shown by the Books, but Not on Hand.

No.	Name.	Discounted by bank.	Maturity.	Amount.
4502	J. D. Smith	Dec.	4, 1891.	$400 00
4512	Nelson Peters	Jan.	1, 1892.	300 00
4513	W. W. Taylor	Jan.	2, 1892.	109 00
4514	W. E. Wilber	Jan.	3, 1892.	130 00

No.	Name.	Discounted by bank.	Maturity.	Amount.
4517	N. Hartsock		Jan. 4, 1892.	23 33
4519	A. K. Anderson		Jan. 5, 1892.	29 00
211				
4520	W. Paulson		Jan. 5, 1892.	106 00
4521	Patrick Tierney		Jan. 6, 1892.	300 00
4523	C. W. Kastersen		Jan. 8, 1892.	114 25
4528	N. Hartsock		Jan. 9, 1892.	117 35
4532	M. Harder		Jan. 13, 1892.	282 85
4533	Pat. Murphy		Jan. 14, 1892.	470 00
4536	Geo. M. Montgomery		Jan. 17, 1892.	200 00
4537	Oscar Buck		Jan. 17, 1892.	155 00
4538	S. T. Stephenson		Jan. 18, 1892.	389 00
4544	Dan. I. Weidner		Jan. 25, 1892.	57 50
4547	T. Erskine		Jan. 28, 1892.	389 00
4550	J. I. Ecker		Jan. 28, 1892.	36 50
4552	Allen McKenzie		Feb. 6, 1892.	300 00
4553	P. Farrell		Feb. 6, 1892.	300 00
4554	Robert B. Cato		Feb. 7, 1892.	50 00
4555	B. M. Howard		Feb. 8, 1892.	240 00
4558	O. E. Walters		M'ch 27, 1892.	602 70
4559	O. E. Walters		M'ch 27, 1892.	602 75
4564	Allen McKinzie		M'ch 29, 1892.	500 00
4767	Edw. Poppin		Apr'l 18, 1892.	215 00
4571	Wm. Farran		May 27, 1892.	149 20
4572	John Peterson		July 15, 1892.	169 60
4574	Ed. Hughes		July 28, 1892.	111 85
4577	Crine Packard		June 8, 1892.	210 40
4578	Walter Havens		June 14, 1892.	255 60
4579	W. B. Johnson		June 10, 1892.	20 30
4581	W. Evans		June 13, 1892.	100 00
4582	Walt Haven		June 18, 1892.	89 71
4583	A. J. Runion		Oct. 10, 1892.	36 65
4584	A. J. Runion		Oct. 23, 1892.	46 75
4585	A. J. Runion		Oct. 25, 1892.	123 50
4588	M. Barnhardt		July 1, 1892.	163 25
4589	M. G. Curtis		July 1, 1892.	69 65
4590	J. H. Meyers		July 17, 1892.	289 20
4593	M. H. Kelley		Aug. 4, 1892.	300 00
4595	J. W. Farley		Aug. 10, 1892.	18 00
4696	Wm. Farrow		Aug. 13, 1892.	34 95
4597	Wm. Farrow		Aug. 16, 1892.	248 16
4598	Pat. Cunningham		Aug. 17, 1892.	119 45
4599	J. J. Townsend		Aug. 13, 1892.	33 00
4600	Patrick Kelley		Aug. 17, 1892.	329 90
4603	P. F. McAininch		Aug. 25, 1892.	118 00
4604	M. J. Ryan		Sep. 12, 1892.	345 35
212				
4605	J. L. Wheeler		Sep. 22, 1892.	47 00

No.	Name.	Discounted by bank.	Maturity.	Amount.
4607	Wm. Farrow		Nov. 16, 1892.	248 17
4608	John Johnson		Jan. 1, 1893.	40 00
4610	B. M. Umphress		Jan. 1, 1893.	70 00
4614	J. W. Ammerman		Jan. 4, 1893.	10 00
4615	Sam. I. F. Weidner		Jan. 4, 1893.	10 00
41623	J. & V. Allison		Jan. 4, 1889.	175 80
46267	David Hatchet		Sep. 26, 1889.	132 00
46268	S. H. Douglass		Sep. 28, 1889.	132 00
46269	J. W. Stenson		Sept. 28, 1889.	132 00
46273	J. J. Reeves		Sept. 28, 1889.	132 00
46270	Chas. Reeves		Oct. 8, 1889.	132 00
46275	J. N. Sheivell		Oct. 3, 1889.	132 00
46276	Chas. Hobson		Oct. 4, 1889.	132 00
46277	Chas. Hobson		Oct. 4, 1889.	132 00
46278	E. R. Hay		Oct. 12, 1889.	132 00
60074	Thos. McDonald		Oct. 10, 1889.	475 90
80037	J. B. Allison		Oct. 4, 1890.	413 00
81026	N. & P. Johnson		Nov. 1, 1890.	39 30
94209	Henry Hurlbut		April 1, 1891.	122 10
94211	M. W. & H. Hurlbut		Apr. 1, 1891.	260 95
94241	Robert Radford		Apr. 1, 1891.	102 75
94243	L. Whitesel		Apr. 15, 1891.	4 20
96217	Ben. Benson		June 1, 1891.	359 95
96256	W. D. Hart		June 1, 1891.	8 00
96257	Rob't B. Branch		Oct. 4, 1891.	21 75
96258	H. Majorian		Oct. 4, 1891.	66 60
96259	Chas. G. Naits		Oct. 4, 1891.	594 45
3044	D. H. Mathews		July 1, 1891.	11 00
3050	P. Anderson		Aug. 1, 1891.	25 70
3052	F. Smith		Sept. 1, 1891.	52 80
3058	Geo. Moon		Sept. 15, 1891.	6 25
3059	A. Munson		Sept. 1, 1891.	73 00
3067	E. P. Matson		M'ch 5, 1892.	22 50
3072	Pat. Moran		Oct. 1, 1892.	212 80
3074	W. H. Mendenhall		Jan. 1, 1893.	220 00
3078	H. Deitrich		Jan. 1, 1891.	28 65
3080	H. Deitrich		Jan. 1, 1891.	19 60
3083	Andrew Schmidt		Oct. 15, 1891.	14 50
3086	L. M. Hurlbut		Oct. 1, 1891.	56 15
3089	John Tubbs		Oct. 1, 1891.	160 55
3091	J. F. Carroll		Oct. 20, 1891.	33 35
3097	N. L. M. Miller		July 1, 1892.	34 00
3098	Wm. Huffeldt		Oct. 1, 1892.	139 55
213				
3099	John D. Johnson		Oct. 1, 1892.	337 00
3103	G. D. Nutt		Nov. 1, 1891.	21 95
3104	A. G. Blakeman		Oct. 1, 1892.	15 00
3105	T. H. Yale		Nov. 1, 1892.	208 30
3107	C. Radford		June 1, 1892.	90 60

No.	Name.	Discounted by bank.	Maturity.	Amount.
3108	C. H. Rohder		Sept. 1, 1892.	50 00
3111	H. C. Christenson		Oct. 20, 1892.	150 00
3112	R. B. Branch		Nov. 1, 1892.	209 10
3113	R. A. Welts		Nov. 1, 1892.	27 50
3114	R. A. Welts		Nov. 1, 1892.	467 00
3116	Carl Holst		Oct. 1, 1892.	100 00
3118	John P. Johnson		Oct. 1, 1892.	43 20
3120	Loren Warren		June 4, 1892.	600 00
3121	Robert Taylor		Aug. 1, 1892.	68 00
3122	C. Rasmusser.		Oct. 1, 1892.	39 15
3123	Edward Krick		Oct. 3, 1892.	473 00
3124	H. Anderson		Oct. 1, 1892.	57 70
3125	Swan Larsen		Sept. 1, 1892.	27 00
3126	L. M. Radford		Oct. 1, 1892.	375 00
3126	Dan. McCurdy		Oct. 1, 1892.	404 00
3129	J. B. Woodard		Dec. 27, 1892.	58 50
3131	B. Moran		Jan. 1, 1893.	9 55
3132	Allen Whitzell		Jan. 1, 1893.	48 35
3133	C. A. Mitchell		Feb. 21, 1893.	25 00
15726	W. Dwyer		Oct. 1, 1887.	237 50
40227	P. E. Haines		Nov. 4, 1888.	112 46
40770	H. W. Holman		Dec. 19, 1888.	456 75
41712	P. E. Haines		Jan. 1, 1889.	129 52
41988	T. P. Owen		Jan. 6, 1889.	226 90
43223	T. P. Owen		M'ch 8, 1889.	219 62
45463	H. B. Gue		June 26, 1889.	107 20
46245	M. K. Neville		Aug. 4, 1889.	327 50
46264	P. E. Haines		Oct. 4, 1889.	333 33
72197	A. C. Graves		Feb. 1, 1890.	160 00
75002	M. Heinrich		May 1, 1890.	264 60
75003	M. Heinrich		May 1, 1890.	203 20
75094	L. G. Fees		May 1, 1890.	298 40
75218	C. E. Farstburg		May 1, 1890.	171 85
77001	W. M. Cowell		July 29, 1890.	110 00
78032	C. C. Epps		Aug. 4, 1890.	165 46
80006	Wm. Muchmore		Oct. 1, 1890.	50 00
80089	O. M. Miller		Oct. 1, 1890.	78 22
81051	Chas. Green		Nov. 1, 1890.	631 33
214				
81052	Chas. Green		Nov. 1, 1890.	631 33
81061	O. M. Miller		Nov. 1, 1890.	118 27
91096	O. M. Miller		Jan. 1, 1891.	333 35
93012	J. S. Preitt		M'ch 1, 1891.	172 00
94186	W. H. Barstow		Apr. 29, 1891.	306 20
96015	R. Flouer		June 1, 1891.	23 37
96023	Geo. Hunter		June 12, 1891.	22 50
96037	J. W. Underhill		June 1, 1891.	600 00
96231	Chas. Green		June 8, 1891.	37,95
81003	Louis Lesh		Nov. 9, 1890.	548 45

No.	Name.	Discounted by bank.	Maturity.	Amount.
1033	James Powers		Aug. 11, 1892.	161 07
1035	Wm. McDonald		Oct. 1, 1892.	120 42
1038	A. C. Brantz		June 4, 1893.	160 37
1041	W. H. Brooks		M'ch 4, 1892.	270 00
1042	N. Elliott		July 10, 1891.	355 24
1047	H. Harding		July 19, 1891.	73 32
1057	H. & J. Fountain		Aug. 1, 1891.	13 85
1059	C. A. & J. B. Clabby		Apr. 4, 1892.	97 50
1060	Thos. Jones		Apr. 10, 1892.	560 00
1061	W. H. Barstow		Apr. 5, 1892.	1,080 00
1068	M. Ross		Sept. 1, 1891.	397 20
1069	C. H. Fisher		Sept. 21, 1891.	180 00
1070	R. Flouer		Sept. 4, 1891.	4 43
1074	R. E. Meagher		Sept. 4, 1891.	481 41
1080	E. H. Underhill		Sept. 3, 1891.	18 25
1106	J. W. Underhill		Oct. 21, 1891.	672 05
1109	M. & R. Ross		Oct. 1, 1891.	61 65
1110	J. W. Comfort		Oct. 4, 1891.	31 30
1112	J. B. Trickey		Oct. 7, 1891.	62 70
1120	J. Donovan		Oct. 18, 1891.	69 15
1121	W. A. Meagher		Oct. 4, 1891.	899 48
1123	C. E. Van Dusen		Oct. 18, 1891.	521 65
1125	Thos. Jones		Apr. 4, 1892.	508 15
1130	C. F. Leslie		Nov. 4, 1892.	118 90
1131	Annie C. Brantz		Dec. 16, 1892.	535 70
1136	W. H. Barstow		Nov. 4, 1891.	523 55
1137	Louis Lesh		Nov. 4, 1891.	117 80
1145	Rob't Flouer		Dec. 4, 1891.	85 20
1152	Chas. W. Pittman		Jan. 4, 1892.	37 69
1153	W. H. Barstow		Jan. 4, 1892.	1,000 12
1158	John Foul		Jan. 3, 1892.	285 80
1159	W. J. Furman		Jan. 3, 1892.	47 55
1166	C. A. & J. B. Clabby		Oct. 4, 1893.	62 50
1167	Geo. Barton		Apr. 28, 1892.	154 20
215				
1168	W. H. Barstow		July 4, 1892.	550 22
1169	W. H. Barstow		Nov. 4, 1892.	563 55
1170	Louis Lesh		Nov. 9, 1893.	134 00
1182	Levi Nixon		June 1, 1892.	234 57
1187	N. Elliott		July 10, 1892.	707 87
1188	N. Elliott		July 10, 1893.	756 48
1189	N. Elliott		July 10, 1894.	805 29
1190	N. Elliott		July 10, 1895.	1,709 00
1191	Thos. Jones		Oct. 4, 1892.	1,626 49
1196	David Meloy		Feb. 10, 1892.	408 30
1198	W. H. Barstow		Jan. 4, 1893.	1,066 60
1200	J. W. Reeder		June 4, 1892.	46 80
1201	David Meloy		Feb. 10, 1893.	49 00
1202	W. H. Brook		M'ch 4, 1893.	290 00

No.	Name. Discounted by bank.	Maturity.	Amount.
1203	J. W. Reeder	June 4, 1893.	34 50
1204	J. W. Reeder	June 4, 1894.	31 50
1205	J. W. Reeder	June 1, 1892.	108 75
1206	J. W. Reeder	June 1, 1893.	115 75
1207	J. W. Reeder	June 1, 1894.	126 75
1208	J. W. Reeder	June 1, 1895.	1,216 56
1210	N. Elliott	Aug. 13, 1895.	492 86
1213	Eriah Wendall	Oct. 4, 1892.	125 30
1215	Henry Fry	Dec. 21, 1892.	50 00
1244	L. C. Yolan	Jan. 1, 1893.	153 00
1253	Wm. Ellis	Dec. 4, 1892.	135 17
1254	C. L. Wallace	Dec. 4, 1893.	70 00
1255	C. Layher	Jan. 4, 1893.	95 00
1256	Wm. Ellis	Apr. 4, 1893.	210 29
1050	W. S. Burch	Aug. 13, 1891.	17 00
49006	J. D. Seaman	Jan. 1, 1889.	584 63
49007	J. D. Seaman	Jan. 1, 1889.	548 28
49018	W. A. Crandall	May 27, 1889.	157 15
28728	V. Erickson	Nov. 1, 1890.	151 00
28725	W. D. Blitz	Nov. 1, 1890.	94 50
28735	E. P. Tipton	Dec. 1, 1890.	99 00
28986	E. Stephens	July 1, 1890.	171 45
29469	E. M. Wassen	Dec. 1, 1890.	150 00
150052	Joseph Lapel	Dec. 1, 1890.	112 00
150056	W. R. Chambers	Dec. 1, 1890.	111 78
95287	A. H. Harmonson	May 3, 1891.	322 63
95288	A. H. Harmonson	May 3, 1891.	67 56
41779	J. M. Siebell	Jan. 4, 1889.	100 00
43211	W. H. Sindell	M'ch 17, 1889.	129 60
216			
73006	Alice J. Keller	M'ch 1, 1890.	75 00
76001	Isaac Warrell	June 1, 1890.	27 87
77011	F. M. Cook	July 25, 1890.	75 00
78008	C. M. Hoff	Aug. 1, 1890.	18 40
80001	L. & H. Thompson	Oct. 11, 1890.	155 20
80266	H. G. Kaines	Oct. 14, 1890.	57 05
81045	John Price	Nov. 1, 1890.	41 00
81048	A. A. Watt	Nov. 1, 1890.	40 00
82001	F. B. Montgomery	Dec. 1, 1890.	62 50
82039	W. J. Crawford	Dec. 1, 1890.	205 00
82023	J. V. Espeny	Dec. 16, 1890.	35 00
82000	S. J. Elsworth	Dec. 24, 1890.	78 50
82046	Geo. Fleishousen	Dec. 1, 1890.	26 50
82085	H. Hoffaker	Dec. 1, 1890.	75 00
91138	Tom Dobson	Jan. 4, 1891.	60 00
91110	A. Kirkpatrick	Jan. 1, 1891.	67 75
91103	C. Stiger	Jan. 1, 1891.	15 75
91044	A. Canfield	Jan. 1, 1891.	106 00
91029	C. P. Mathews	Jan. 1, 1891.	110 00

No.	Name.	Discounted by bank.	Maturity.	Amount.
91008	F. Yocum		Jan. 1, 1891.	35 00
91000	C. W. Pound		Jan. 1, 1891.	7 20
93007	J. C. Wry		M'ch 1, 1891.	117 00
93206	C. D. Dixon		M'ch 17, 1891.	28 10
2005	J. C. Jordan		Sept. 3, 1892.	52 60
2015	A. H. Harmonson		Apr. 30, 1892.	408 69
2023	F. M. Snediker		July 7, 1892.	50 00
2025	Wm. Belcher		Oct. 13, 1892.	39 75
2034	Reed & Wycoff		Nov. 1, 1891.	314 13
2039	C. S. Bates		Dec. 1, 1891.	91 92
2069	Miller Bros		Jan. 1, 1893.	229 85
15703	V. Vifquain		June 1, 1887.	200 00
36595	S. E. &. J. G. Spencer		June 25, 1888.	1,200 00
15707	V. Vifquain		Aug. 1, 1887.	250 00
37235	H. M. Casebier		July 21, 1888.	418 77
39233	J. E. Vassett		Oct. 14, 1888.	88 69
39951	L. H. Kilbourn		Nov. 28, 1888.	240 13
40149	Claus Peters		Nov. 12, 1888.	200 00
60228	Willis E. Bellows		Oct. 5, 1889.	75 00
60255	J. C. Van Baskirk		Oct. 30, 1889.	2,147 05
71231	J. Tubman		Jan. 31, 1890.	100 00
72161	M. & J. Oppenheimer		Feb. 3, 1890.	65 00
73177	G. F. McDonald		M'ch 6, 1890.	150 00
75003	Alice G. Simms		May 16, 1890.	612 00
217				
78017	S. & S. Grimm		Aug. 23, 1890.	110 00
78072	J. C. Roberts		Aug. 3, 1890.	90 00
78234	J. O. Purbaugh		Aug. 23, 1890.	46 00
79285	E. S. Smithson		Sept. 3, 1890.	75 00
82032	S. L. Wright		Dec. 17, 1890.	324 00
91207	F. G. Hamer		Jan. 12, 1891.	1,000 00
91312	F. Drake		Jan. 26, 1890.	153 90
91417	D. F. Doubt		Jan. 25, 1891.	25 00
91421	S. A. Ward		Jan. 4, 1891.	18 50
91435	F. G. Hamer		Jan. 12, 1891.	1,500 00
92017	R. R. Marea		Feb. 12, 1891.	275 00
92216	H. Ramphert		Feb. 21, 1891.	37 80
94107	D. F. & L. L. Doubt		Apr. 22, 1891.	50 00
95268	E. G. McNeal		May 4, 1891.	25 00
96052	W. P. Harris		June 3, 1891.	126 10
39122	Phillip Andres		July 23, 1891.	100 00
39123	E. P. Roggen		Aug. 5, 1891.	3,182 85
39124	W. C. Crooks		Aug. 9, 1891.	300 00
39127	F. S. Granger		Aug. 28, 1891.	200 00
39129	Rose M. Bustard		Aug. 19, 1891.	60 00
39131	H. A. Seymore Mfg. Co		Aug. 16, 1891.	92 00
39134	J. E. Waite		Sept. 2, 1891.	50 00
39138	James A. Bailey		Sept. 11, 1891.	116 85
39140	J. W. Ferguson		Oct. 27, 1891.	2,135 00

No.	Name.	Discounted by bank.	Maturity.	Amount.
39145	E. S. Conner		Oct. 18, 1891.	450 00
39152	R. Sweeney		Oct. 4, 1891.	200 00
39157	J. R. & J. C. Taylor		Nov. 12, 1891.	308 82
39163	J. J. Robinson		Nov. 5, 1891.	15 00
39164	W. H. Barstow		Nov. 3, 1891.	84 00
39165	S. L. Wright		Dec. 1, 1891.	348 00
39168	H. E. James		Dec. 23, 1891.	35 35
39171	P. A. Gatchell		Jan. 15, 1892.	45 00
113096	Jas. H. Goodrich		M'ch 25, 1892.	28 00
113136	S. S. Smith		M'ch 20, 1892.	25 00
114062	S. S. Smith		Apr. 18, 1892.	100 00
115015	Geo. H. Bailey		May 14, 1892.	2,058 50
117004	John Archers		July 8, 1892.	15 00
118098	C. H. Blanchford		Aug. 19, 1892.	100 00
118118	Geo. A. Van Sickle		Aug. 10, 1892.	100 00
118165	H. A. Askin		Aug. 14, 1892.	25 00
119019	W. E. Wamack		Sept. 4, 1892.	150 00
218				
120066	Sam'l A. Chapman		Oct. 9, 1892.	150 00
120086	Robert Grant		Oct. 29, 1892.	18 70
120181	D. E. Swaney		Oct. 24, 1892.	50 00
121047	Jules Rhodes		Nov. 6, 1892.	150 00
121155	Sarah E. Brown		Nov. 22, 1892.	200 00
122064	Jerry Dunley		Dec. 3, 1892.	70 00
114070	A. A. Richardson		Apr. 20, 1892.	177 00
156000	R. McFarland		Oct. 1, 1886.	23 00
15603	Eli Wilson		Oct. 1, 1886.	72 00
15607	E. Munning		Oct. 1, 1886.	40 00
15609	A. McFarland		Oct. 1, 1886.	60 00
15611	W. F. Fitzke		Jan. 1, 1887.	55 00
15613	Jas. Geres		Jan. 1, 1887.	50 00
15617	Jas. Sperry		Nov. 1, 1886.	22 50
15618	J. Major		Nov. 1, 1886.	17 50
15619	G. T. Jones		Aug. 16, 1886.	35 00
15623	A. McFarland		May 5, 1886.	76 37
15627	D. M. Cook		June 1, 1886.	75 00
15630	Henry Hilt		June 1, 1886.	50 00
15631	John Johnson		May 3, 1887.	500 00
15632	John Johnson		May 3, 1886.	500 00
15637	K. J. Willis		Feb. 19, 1889.	140 00
15638	K. J. Willis		Feb. 19, 1888.	130 00
15639	K. J. Willis		Feb. 19, 1887.	100 00
15649	A. Dunkler		Oct. 1, 1886.	40 00
15651	A. J. Horton		July 1, 1887.	145 00
15652	A. J. Horton		July 1, 1888.	179 50
15658	John Turman		Oct. 1, 1886.	40 00
15661	J. F. Grey		Oct. 1, 1886.	72 00
15668	Randall & Meyer		Sept. 16, 1886.	1,333 34
15669	J. Ball		Jan. 1, 1887.	1,000 00

No.	Name.	Discounted by bank.	Maturity.	Amount.
15670	Ira Johnson		Jan. 1, 1888.	457 40
34899	H. Wohlenberg		April 1, 1888.	57 50
43953	H. Wohlenberg		Apr. 1, 1889.	103 00
46226	H. Wohlenberg		Apr. 1, 1890.	372 00
46401	M. A. & J. W. Small		May 29, 1891.	2,000 00
46402	M. A. & J. W. Small		May 29, 1891.	1,500 00
46403	M. A. & J. W. Small		May 29, 1891.	2,500 00
46404	M. A. & J. W. Small		May 29, 1891.	1,500 00
46405	M. A. & J. W. Small		May 29, 1891.	1,500 00
46406	M. A. & J. W. Small		May 29, 1891.	2,500 00
46407	M. A. & J. W. Small		May 29, 1891.	1,000 00
46408	M. A. & J. W. Small		May 29, 1891.	2,000 00
46409	M. A. & J. W. Small		May 29, 1891.	1,000 00
46410	M. A. & J. W. Small		May 29, 1891.	1,000 00
219				
46411	M. A. & J. W. Small		May 28, 1891.	1,000 00
46412	M. A. & J. W. Small		May 29, 1891.	1,000 00
46413	M. A. & J. W. Small		May 29, 1891.	1,500 00
25701	J. W. Small		July 1, 1887.	2,000 00
25705	J. W. Small		July 1, 1887.	2,000 00
28024	M. Dunkel		Oct. 17, 1887.	41 35
28072	E. T. Norden		Nov. 18, 1887.	140 00
28073	H. C. Masterson		Nov. 9, 1887.	73 50
28074	I. L. Masterson		Nov. 26, 1887.	35 00
15706	J. W. Small		July 1, 1887.	1,000 00
36950	Mary A. Small		July 15, 1888.	207 57
49092	Ada Fogg		June 25, 1888.	225 00
49955	Mary & J. W. Small		Nov. 29, 1888.	786 66
39967	M. Dunkel		Nov. 26, 1888.	105 25
46244	Mary A. Small		July 15, 1889.	661 33
46210	Mary A. & J. W. Small		Nov. 29, 1889.	786 67
74011	H. B. Kirkpatrick		Apr. 23, 1890.	310 20
74019	A. P. Reynolds		Apr. 23, 1890.	27 00
74035	T. J. Kemp		Apr. 23, 1890.	13 35
50110	J. Frederick		Demand	20 00
50115	Rewick Bros. & Co.		Demand	4,000 00
50116	M. D. Reynolds		Demand	310 87
50117	M. Niller		Demand	874 60
50118	C. W. Gibson		Demand	355 50
50119	C. W. Gibson		Demand	526 89
50120	C. W. Gibson		Demand	555 15
50121	Joel K. Scott		Demand	884 65
50123	W. R. Miller		Demand	613 15
50122	S. F. Reynolds		Demand	317 34
49091	E. F. Martin		May 27, 1888.	900 00
49094	E. L. Martin		Aug. 23, 1888.	620 00
49105	J. W. Walters		Oct. 11, 1888.	715 00
49116	D. D. Spail		Nov. 17, 1888.	540 25
49185	W. E. Hunt		May 18, 1888.	236 25

No.	Name.	Discounted by bank.	Maturity.	Amount.
49130	J. R. Little.....		Jan. 1, 1889.	260 40
49166	Fairmont Hotel Co.....		Apr. 4, 1889.	357 61
49147				
78011	First National bank, Fairmont.		Aug. 23, 1890.	2,436 73
	Hogue judgment			14,854 00
	Insurance judgments.....			3,358 00
				141,011 44

220

EXHIBIT 40—E. H.

(Copy.)

Babbit's Certificate of Deposit Register.

Date.	Deposited by—	Number.	Amount.	Total.	Date paid.	Payable to—
1891.						
Aug. 17.	Collections.	25097	50			

Ex. 41—E. H. *[No. 4.]

(Copy.)

Capital National Bank.

Interest at — if left — months. No interest after maturity.

$50,000.00. LINCOLN, NEB., *Aug.* 17, 1891.

J. E. Hill, treas'r, has deposited in this bank fifty thousand dollars payable to the order of self on return of this certificate properly endorsed.

No. 25097. C. W. MOSHER, *P't.*

Not subject to check.

[Printed across the face in red ink:] Paid Dec. 6, 1893. Capital National bank, Lincoln, Neb.

Ex. 42—E. H.

Babbit's Certificate of Deposit Register.

Date.	Deposited by—	Number.	Amount.	Total.	Date paid.	Payable to—
1891.						
Aug. 6.	Collections.	25047	975	....	8, 8, '91.	

[* Word and figure enclosed in brackets erased in copy.]

(Copy.) *[No. 4.]

Capital National Bank.

Interest at — if left — months. No interest after maturity.

$37,975.00. LINCOLN, NEB., *Aug. 5th*, 1891.

J. E. Hill, treas., has deposited in this bank thirty-seven thousand nine hundred seventy-five dollars payable to the order of self on return of this certificate properly endorsed.

No. 25047. C. W. MOSHER, *P't.*

Not subject to check.

[Printed across the face in red ink:] Paid Dec. 13, 1892. Capital National bank, Lincoln, Neb.

Pay C. W. Mosher, pr't, or order, for collection account of treasurer of State of Nebraska.

J. E. HILL, *Treasurer.*
BARTLETT.

221 Ex. 43—E. H.

Babbit's Certificate of Deposit Register.

Date.	Deposited by—	Number.	Amount.	Total.	Date paid.	Payable to—
1891.						
July 27.	H. R. Krug.	24986	1,000	.....	8, 7, '91	

Copy. *[No. 4.]

Capital National Bank.

Interest at 6% if left 6 months. No interest after maturity.

$7,000.00. LINCOLN, NEB., *July* 27, 1891.

H. R. Krug has deposited in this bank seven thousand dollars, payable to the order of self on return of this certificate properly endorsed.

No. 24986. C. W. MOSHER, *P't.*

Not subject to check.

Int. paid to Nov. 27, '91. Int. paid to July 27, '92.
H. R. KRUG.

[Printed across the face in red ink:] Paid Aug. 13, 1892. Capital National bank, Lincoln, Neb.

[* Word and figure enclosed in brackets erased in copy.]

Ex. 44—E. H.

Babbit's Certificate of Deposit Register.

Date.	Deposited by—	Number.	Amount.	Total.	Date paid.	Payable to—
1891.						
July 27.	A. P. S. Stuart.	24981	20	....	1, 27, '92	

(Copy.) * [No. 4.]

Capital National Bank.

Interest at 6% if left six (6) months. No interest after maturity.

$2,000.00. LINCOLN, NEB., *July* 27, 1891.

A. P. S. Stuart has deposited in this bank two thousand dollars payable to the order of self on return of this certificate properly endorsed.

No. 24991. C. W. MOSHER, *Pt.*

Not subject to check.

A. P. S. Stuart. M. E. Stuart.

[Printed across the face in red ink:] Paid Jan. 27, 1892. Capital National bank, Lincoln, Neb.

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Ex. 45—E. H.

Babbit's Certificate of Deposit Register.

Date.	Deposited by—	Number.	Amount.	Total.	Date paid.	Payable to—
1891.						
July 20.	Collections.	24941	5,000	...1	8, 6, '91	

(Copy.) * [No. 4.]

Lancaster Co. Coupons.

Capital National Bank.

Interest at — if left — months. No interest after maturity.

$10,000.00. LINCOLN, NEB., *July* 20, 1891.

J. E. Hill, St. treas., has deposited in this bank ten thousand and no $\frac{100}{100}$ dollars payable to the order of self on return of this certificate properly endorsed.

No. 24941. O. F. FUNKE,
For Cash.

Not subject to check.

[Printed across the face in red ink:] Paid Aug. 6, 1891. Capital National bank, Lincoln, Neb.

[* Word and figure enclosed in brackets erased in copy.]

Ex. 46—E. H.

Babbit's Certificate of Deposit Register.

Date.	Deposited by—	Number.	Amount.	Total.	Date paid.	Payable to—
1891.						
Nov. 18.	Colls.....	25636	100			

(Copy.) * [No. 4.]

Capital National Bank.

Interest at — if left — months. No interest after maturity.

$50,000.00 LINCOLN, NEB., *Nov.* 18, 1891.

J. E. Hill, treas., has deposited in this bank fifty thousand dollars payable to the order of self on return of this certificate properly endorsed.

No. 25636. C. W. MOSHER, *P't.*

Not subject to check.
J. E. Hill, treas.

[Printed across the face in red ink:] Paid May 21, 1892. Capital National bank, Lincoln, Neb.

6.

Ex. 47—E. H.

Copy.

1884.

Cr. 12, 29..... $813

Ex. 48—E. H. 55.

Copy.

1888.

Apr. 14. Cr..... .... $2,500

223

Ex. 49—E. H.

58.

Copy.

1888.

Cr. June 9..... 1,500

Ex. 50—E. H.

65.

Copy.

1888.

Nov. 16. Cr. Error..... $2,500

[* Word and figure enclosed in brackets erased in copy.]

Ex. 51—E. H.

78.

Copy.

1889.

June 28. By warrants.... 10,000

Ex. 52—E. H.

83.

Copy.

1889.

Sept. 30. By cost real est..... 7,000

Ex. 53—E. H.

95.

Copy.

1890.

M'ch 19. Cr..... ..... 5,000 00

Ex. 54—E. H.

98.

Copy.

1890.

May 16. Credit N. Y..... ..... 1,500 00

Ex. 55—E. H.

19. Credit Chic 2,000

Ex. 56—E. H.

21. Credit N. Y... 1,500

Ex. 57—E. H.

99.

Copy.

1890.

June 3. Credit real est... 2,500

224

Ex. 58—E. H.

108.

Copy.

1890.

Sept. 24. Cr. by real est. ac..... 5,000

Ex. 59—E. H.

115.

Copy.

Dec. 27. Cr. S. & B. ac..... 10,000

Ex. 60—E. H.

125.

Copy.

1891.

Ap'l 9. Cr. pris. cont..... 800

Ex. 61—E. H.

127.

Copy.

1891.

May 2. Credit..... 7,200

Ex. 62—E. H.

131.

Copy.

1891.

June 20. Cr. by... .... 10,000 00

Ex. 63—E. H.

140.

Copy.

1891.

Sept. 25. Cr..... 14,000

Ex. 64—E. H.

151.

Copy.

1892.

Feb. 2.	To bal.....	2,103 44

Ex. 65—E. H.

158.

Copy.

1892.

May 4.	Credit by York.....	5,000

225 Ex. 66—E. H.

Credits to Interest-paid Account.

Dec.	29, 1884.....	$813	
April	14, 1888.....	2,500	
June	9, 1888.....	1,500	
Nov.	16, 1888.....	2,500	
June	28, 1889.....	10,000	
Sept.	30, 1889.....	7,000	
March	19, 1890.....	5,000	
May	16, 1890.....	1,500	
June	3, 1890.....	2,500	
May	19, 1890.....	2,000	
May	21, 1890.....	1,500	
Sept.	24, 1890.....	5,000	
Dec.	27, 1890.....	10,000	
April	9, 1891.....	800	
May	2, 1891.....	7,200	
June	20, 1891.....	10,000	
Sept.	25, 1891.....	14,000	
Feb'y	2, 1892.....	2,103	44
May	4, 1892.....	5,000	
		$90,916	44

Copy.	Tuesday, Dec. 24, 1889.			Thursday, Dec. 26, 1889.			
Name.	Checks in detail.	Total Dr.	Credits.	Balance.	Checks in detail.	Total Dr.	Credits.
State treasurer		50,000	23,328 75 100,000	73,328 75			

Ex. 68.—E. H.

$30,000 *Surplus Charged Off Feb'y* 2, 1892.

Surplus	$30,000		
Carleton coll.	1,425	85	
Nebraska Mfg. Co	121	86	
			$31,547 71
Chase	900		
Hale	111	25	
Stout	1,050		
Stout	3,150		
Stout	2,100		
Nebr. Mfg. Co	4,000		
Striplin	300		
Barstow	420	23	
Simmons	40	90	
Wilcox	50	00	
McDonald	165		
Roggen	355	32	
McFall	412		
Glumply	36	61	
Pierce	50	00	
Pierce	65	00	
Sewell	40	00	
Adams	325	00	
Jenkins	606	96	
Smithson	25	00	
Ewing	325		
Garlock	78	75	
Cooper	400	00	
Hawkins	100		
McMahon	250		
Adams	100		
Ferris	125		
McMahon	500		
American Exchange Europe	725	40	
Fairmount	521	91	
Carleton	4,073	13	
			$21,402 46
Premium	621	57	
Stocks & bonds	4,650		
Expense	646	08	
Taxes	1,012	50	
Wages	1,111	66	
Interest paid	2,103	44	
			10,145 25
			$31,547 71

228 EX. 69.—E. H.

DR. *Western Manufacturing Co. Notes in Account with Capital National Bank, Lincoln, Neb.*

No.	Issued.	Amount.	Paid.
41672	July 25, 1888	5,000	Jan. 19, '89
42462	" 25, "	5,000	Oct. 27, '88
44752	Jan. 19, 1889	5,000	May 25, '89
60069	May 25, "	5,000	Sept. 30, '89
74006	Sept. 30, "	5,000	Apr. 7, '90
80065	Apr. 7, 1890	5,000	May 9, '91
92000	Aug. 7, "	5,000	Feb. 14, '91
1	" 7, "	5,000	Oct. 30, '90
2	" 7, "	5,000	Feb. 10, '91
3	" 7, "	5,000	" 10, '91
4	" 7, "	5,000	Sept. 12, '90
93000	" 28, "	5,000	" 26, '90
1	" 28, "	5,000	M'ch 11, '91
2	" 29, "	5,000	May 9, '91
93030	Oct. 2, "	5,000	Oct. 30, '90
98011	Feb. 10, 1891	5,000	Apr. 30, '91
2	" 10, "	5,000	Feb. 16, '91
3	" 14, "	5,000	May 1, '91
95139	" 16, "	5,000	June 2, '91
96093	M'ch 11, "	5,000	" 5, '91
4	" 11, "	5,000	" 3, '91
98030	Apr. 13, "	5,000	Aug. 18, '91
100117	May 9, "	5,000	June 8, '91
101012	" 9, "	5,000	May 14, '91
98161	June 2, "	5,000	Aug. 8, '91
99022	" 3, "	5,000	Sept. 17, '91
99068	" 5, "	5,000	" 2, '91
101104	Aug. 8, "	5,000	Dec. 1, '91
102053	" 18, "	5,000	" 11, '91
112005	" 27, "	5,000	Nov. 4, '91
101194	" 28, "	5,000	" 19, '91
113000	" 28, "	5,000	" 5, '91
102063	" 2, "	5,000	Dec. 11, '91
102093	Sept. 17, "	5,000	Jan. 18, '92
112013	Oct. 7, "	5,000	Feb. 5, '92
112016	" 26, "	5,000	M'ch 4, '92
111187	" 29, "	5,000	Feb. 5, '92
113007	Nov. 4, "	5,000	M'ch 4, '92
101292	" 5, "	5,000	Jan. 12, '92
102173	" 7, "	2,500	" 18, '92
111208	" 7, "	2,500	" 18, '92
112054	" 12, "	5,000	Nov. 18, '91
112072	" 19, "	5,000	Feb. 16, '92
112112	" 28, "	5,000	M'ch 4, '92

No.	Issued.		Amount.	Paid.
113019	Dec. 1, 1891	.....	5,000	Apr. 18, '92
113037	" 11, "	.....	5,000	M'ch 31, '92
229				
114010	" 11, "	.....	5,000	Apr. 26, '92
111328	Jan. 18, 1892	.....	5,000	Feb. 3, '92
113098	" 18, "	.....	5,000	Apr. 18, '92
114068	" 18, "	.....	5,000	June 13, '92
117003	" 18, "	.....	5,000	July 25, '92
114107	Feb. 3, "	.....	5,000	June 13, '92
115033	" 5, "	.....	5,000	" 18, '92
116008	" 5, "	.....	5,000	June 13, '92
117005	" 11, "	.....	5,000	Apr. 5, '92
118000	" 11, "	.....	5,000	Aug. 6, '92
118001	" 11, "	.....	5,000	" 6, '92
118004	" 15, "	.....	5,000	Dec. 10, '92
118005	" 15, "	.....	5,000	Aug. 8, '92
115069	" 16, "	.....	5,000	June 13, '92
115092	" 19, "	.....	5,000	" 13, '92
116012	" 19, "	.....	5,000	" 16, '92
119000	M'ch 3, "	.....	5,000	July 30, '92
119001	" 3, "	.....	5,000	M'ch 4, '92
119002	" 3, "	.....	5,000	" 7, '92
119003	" 3, "	.....	5,000	Aug. 12, '92
119004	" 3, "	.....	5,000	May 23, '92
115124	" 4, "	.....	5,000	June 13, '92
115125	" 4, "	.....	5,000	" 13, '92
116025	" 4, "	.....	5,000	" 18, '92
116026	" 4, "	.....	5,000	" 18, '92
119007	" 7, "	.....	5,000	Sept. 9, '92
119010	" 12, "	.....	5,000	Aug. 11, '92
119016	" 16, "	.....	5,000	" 11, '92
119018	" 26, "	.....	5,000	May 16, '92
116100	" 31, "	.....	5,000	June 18, '92
116111	Apr. 9, "	.....	5,000	June 18, '92
116116	" 18, "	.....	5,000	" 16, '92
116117	" 18, "	.....	5,000	" 18, '92
120008	" 28, "	.....	5,000	May 6, '92
118128	June 13, "	.....	5,000	Aug. 8, '92
118129	" 13, "	.....	5,000	July 25, '92
118130	" 13, "	.....	5,000	Aug. 8, '92
118131	" 13, "	.....	5,000	" 8, '92
119048	" 13, "	.....	5,000	" 12, '92
119049	" 13, "	.....	5,000	" 10, '92
119050	" 13, "	.....	5,000	Sept. 30, '92
122002	" 16, "	.....	5,000	Jan. 5, '93
120017	" 18, "	.....	5,000	Oct. 19, '92
120018	" 18, "	.....	5,000	Aug. 10, '92
120019	" 18, "	.....	5,000	" 13, '92
122003	" 18, "	.....	5,000	" 13, '92

No.	Issued.	Amount.	Paid.
122004	June 18, 1892	5,000	July 26, '92
122005	" 18, "	5,000	" 26, '92
131010	July 26, "	5,000	
131011	" 26, "	5,000	
230			
122016	" 30, "	5,000	
120165	Aug. 24, "	5,000	Dec. 10, '92
122018	" 24, "	5,000	
117189	" 30, "	5,000	Sept. 20, '92
118193	" 30, "	5,000	Oct. 17, '92
118194	" 30, "	5,000	" 17, '92
118195	" 30, "	5,000	" 17, '92
118196	" 30, "	5,000	" 17, '92
118197	" 30, "	5,000	" 17, '92
118198	" 30, "	5,000	" 17, '92
118199	" 30, "	5,000	" 17, '92
119169	" 30, "	5,000	" 19, '92
119170	" 30, "	5,000	" 19, '92
119171	" 30, "	5,000	" 19, '92
120172	" 30, "	5,000	Dec. 10, '92
133000	Sept. 9, "	5,000	
119174	" 15, "	5,000	Sept. 20, '92
119175	" 15, "	5,000	" 20, '92
133001	" 15, "	5,000	Oct. 3, '92
133002	" 15, "	5,000	" 3, '92
131017	" 20, "	5,000	
133003	" 20, "	5,000	
133004	" 20, "	5,000	
122097	" 30, "	5,000	Jan. 5, '93
119177	Oct. 3, "	5,000	Oct. 19, '92
119178	" 3, "	5,000	" 19, '92
133009	" 10, "	5,000	
132008	" 17, "	5,000	
132009	" 17, "	5,000	
132010	" 17, "	5,000	
134002	" 17, "	5,000	
134003	" 17, "	5,000	
134004	" 17, "	5,000	
134005	" 17, "	5,000	Oct. 26, '92
132012	" 19, "	5,000	
133011	" 19, "	5,000	
133012	" 19, "	5,000	
133013	" 19, "	5,000	
133014	" 19, "	5,000	
133015	" 19, "	5,000	
120206	" 26, "	5,000	Oct. 27, '92
134013	" 27, "	5,000	
135005	Nov. 30, "	5,000	

No.	Issued.	Amount.	Paid.
136000	Dec. 9, 1892	5,000	
136001	" 10, "	5,000	
136002	" 10, "	5,000	
136003	" 10, "	5,000	
136006	" 30, "	5,000	Jan. 6, '93
134038	Jan. 5, 1893	5,000	
134039	" 5, "	5,000	
134040	" 5, "	5,000	
231 & 232			
136008	" 5, "	5,000	
137001	" 5, "	5,000	
137002	" 5, "	5,000	
136010	" 6, "	5,000	
137203	" 21, "	5,000	
	Total	755,000	

(Here follow exhibits marked pp. 233 to 238, inclusive.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

239 Ex. 75—E. H.

(Copy.)

Registry return receipt sent June 14, 1893.
Reg. No. 1613 from post-office at Lincoln, Nebr.
* Reg. letter / Reg. †[parcel] } addressed to Gruetter & Joers, Lincoln, Nebr.
After obtaining receipt below the postmaster will mail this card, without cover and without postage, to address on the other side.

Received the above-described registered { * letter. / †[parcel].

(Sender's name on the other side.)

Sign on dotted lines to the right.

When delivery is made to other than addressee, the name of both addressee and recipient must appear.

Gruetter & Joers.

....

When the registered letter or parcel accompanying this card is delivered, the postmaster will require signature to the receipt on the other side, also on his record of registered deliveries, and mail this card without cover to address below.

A penalty of $300 is fixed by law for using this card for other than official business.

Post-office Department.

Official business.

Post-office at { Stamp here name of post-office / and date of delivery.

Return to:

Name of sender: K. K. Hayden.

Street and number, or post-office box. .....

Post-office at Lincoln,

County of Lancaster, State of Neb.

---

* Erase letter or parcel, according to which is sent.
[† Word enclosed in brackets erased in copy.]

240

Ex. 76—E. H.

(Copy.) * [No. 4.]

Certificate No. 3.

Capital National Bank.

Interest at 6% if left 6 months. No interest after maturity.

$5,000. LINCOLN, NEB., *Nov.* 2, 1892.

A. P. S. Stuart has deposited in this bank five thousand dollars payable to the order of self on return of this certificate properly endorsed.

No. 27967. C. W. MOSHER, *Pt.*

Not subject to check.

A. P. S. Stuart.

Aug. Theod. Gruetter & Co.

Paid through Lincoln clearing-house Dec. 28, 1892, to First National bank.

[Printed across the face in red ink:] Paid Dec. 28, 1892. Capital National bank, Lincoln, Neb.

Ex. 77—E. H.

(Copy.) * [No. 4.]

Certificate No. 3.

Capital National Bank.

Interest at 6% if left 12 months. No interest after maturity.

$2,000. LINCOLN, NEB., *Apr.* 6, 1892.

A. P. S. Stuart has deposited in this bank twenty hundred dollars payable to the order of self on return of this certificate properly endorsed.

No. 26572. C. W. MOSHER.

Not subject to check.

A. P. S. Stuart.

[Printed across the face in red ink:] Paid Dec. 27, 1892. Capital National bank, Lincoln, Neb.

[* Word and figure enclosed in brackets erased in copy.]

241 Ex. 78—E. H.

(Copy.) * [No. 4.]

Certificate No. 3.

Capital National Bank.

Interest at 5 or 6% if left 6 or 12 months. No interest after maturity.

$2,000.00. LINCOLN, NEB., *July* 9, 1892.

A. P. S. Stuart has deposited in this bank two thousand $\frac{00}{100}$ dollars payable to the order of self on return of this certificate properly endorsed.

No. 27161. O. F. FUNKE,
For Cash.

Not subject to check.

No. 32492. National Bank of Commerce, Omaha, Neb.

[Printed across the face in red ink:] Paid Jan. 9, 1893. Capital National bank, Lincoln, Neb.

A. P. S. Stuart. Pay to S. Karpen & Bros. order Aug. Th. Gruetter & Co.

S. KARPEN & BROS.

Paid through Lincoln clearing-house Jan. 9, 1893. American Exch. Nat'l Bank of Lincoln, Neb.

National Bank of Commerce:

Pay —— ——, Omaha, Neb., or order for collection and returns. Bank of Commerce, Chicago, Ill.

FRED MILLER, *Cashier.*

For collection account of National Bank of Commerce, Omaha, Neb.

E. L. BIERBOWER, *Cashier.*

Deed Record 75, page 536.

Warranty Deed.

Ambrose P. S. Stuart and wife
to
Charles Holland.

Filed for record Dec. 5, 1893, at 2 p. m. Jno. D. Knight, register of deeds; J. H. Fawell, dep. Fee, $1.00.

Know all men by these presents, that Ambrose P. S. Stuart and Martha E. Stuart husband and wife of the county of Lancaster and State of Nebraska, for and in consideration of the sum of one hundred thousand dollars in hand paid, do hereby grant, bargain,

[* Word and figure enclosed in brackets erased in copy.]

242 sell, convey, and confirm unto Charles Holland of the county of York, and State of Maine, the following-described real estate situated in Lincoln, in Lancaster county and State of Nebraska, to wit:

The south half of lots four, five, and six (4, 5 & 6) in block 27; lot "C" in block 54; subd. of lots 1, 2, 3, 4, 5, & 6 lots nine and ten (9 & 10) in block 59; lot four (4) in block forty-one, (41), lot "A" subdivision of lots 4, 5, & 6, in block 10 in Kinney's O St. addition; lots 7 & 8 in block 28, in Kinney's O St. addition; lots 3, 4, 5, & 6, in block 2 in Spencer's addition; lot "C" in Hoagland's subdivision and lots D, E, & F, in Baldwin's subdivision of lots 5 & 6 in block 39. And we do hereby covenant with the said Charles Holland and his heirs and assigns that we are lawfully seized of said premises; that they are free from incumbrance excepting of certain mortgage of $30,000; that we have good right and lawful authority to sell the same; and we do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever. And the said Martha E. Stuart hereby relinquishes all her right of dower in and to the above-described premises.

Signed this 5th day of December, A. D. 1893.

AMBROSE P. S. STUART.
MARTHA E. STUART.

In presence of—
WILLIAM STULL.

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 5th day of December, A. D. 1893, before me, H. T. Folsom, a notary public, duly commissioned and qualified for and residing in said county, personally came Ambrose P. S. Stuart and Martha E. Stuart, his wife, to me known to be the identical persons described — and who executed the foregoing conveyances as grantor-, and acknowledged the said instrument to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

[SEAL.] H. T. FOLSOM.

Commission expires Feb. 28, 1899.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, John Harrop, register of deeds of said county, hereby certify that the above and foregoing is a true and correct copy of a deed as appears of record in this office in Deed Record 75 at page 536.

243 In testimony whereof I have hereunto set my hand and affixed the seal of said county, at the city of Lincoln, this 20th day of February, A. D. 1895.

JOHN HARROP,
Register of Deeds,
By J. A. KNIGHT, *Deputy.*

Ex. 79—E. H.

Miscellaneous Record D, page 364.

General Power of Attorney from Charles Holland to Ambrose P. S. Stuart.

Filed for record Dec. 27th, 1882, at 10.15 a. m. J. H. McClay, county clerk.

Know all men by these presents that I, Charles Holland of Kennebunk, in the county of York, State of Maine, have made, constituted and appointed and by these presents do make, constitute and appoint Ambrose P. S. Stuart of Lincoln, in the county of Lancaster and State of Nebraska, to be my true, sufficient and lawful attorney for me and in my name and stead, and to use, to ask, demand, levy, require, recover, and receive of and from all and every person or persons whomsoever, the same shall or may concern all and singular sum and sums of money, debts, goods, wares, merchandise, effects, and things whatsoever and wheresoever they shall and may be found due, owing, payable, belonging and coming unto me the constituent by any ways and means whatsoever, and to collect all notes and debts, give discharges of the same and to discharge all mortgages or other instruments held as security for any debt due me in Nebraska, to execute assignments and deeds in my name in said Nebraska, by signing, sealing and delivering the same. Giving and hereby granting unto my said attorney full and whole strength, power and authority in and about the premises, and to take and use all due means, course and process in the law, for the obtaining and recovering the same, and of recoveries and receipts thereof, and in my name to make, seal and execute due acquittance and discharge; and for the premises to appear, and the person of me the constituent to represent before any governors, judges, justices,
244 officers, and ministers of the law whatsoever, in any court or courts of judicature, and there on my behalf to answer, defend and reply unto all actions, causes, matters and things whatsoever relating to the premises. Also to submit any matter in dispute to arbitration or otherwise; with full power to make and substitute one or more attorneys under him *in* my said attorney and the same again at pleasure to revoke. And generally to say, do, act, transact, determine, accomplish and finish all matters and things whatsoever relating to the premises as fully, amply and effectually to all intents and purposes, as I the said constituent, if present, ought or might personally, although the matter should require more special authority than is herein comprised, I the said constituent ratifying, allowing and holding firm and valid all and whatsoever my said attorney or his substitutes shall lawfully do or cause to be done in and about the premises, by virtue of these presents.

In witness whereof I have hereunto set my hand and seal this

twenty-first day of December, in the year of our Lord one thousand eight hundred and eighty-two.

CHARLES HOLLAND. [SEAL.]

Signed, sealed & delivered in presence of—
CHRISTOPHER LITTLEFIELD.

STATE OF MAINE, } ss:
County of York, }

On this 21 day of December, A. D. 1882, before me, C. Littlefield, a notary public, duly appointed, commissioned and qualified for and residing in the said county, personally appeared the above-named Charles Holland, to me personally known to be the identical person described in and whose name is affixed to the foregoing instrument and he acknowledged the same to be his voluntary act and deed.

In testimony whereof I have hereunto set my hand, at said Kennebunk, in said county of York, the day and year last above written.

[SEAL.] C. LITTLEFIELD,
Notary Public.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, John Harrop, register of deeds of said county, hereby certify that the above and foregoing is a true and correct copy of
245 a P. of attorney as appears of record in this office, in Miscl. Record D, at page 364.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at the city of Lincoln, this 20th day of February, A. D. 1895.

[SEAL.] JOHN HARROP,
Register of Deeds,
By J. A. KNIGHT, *Dep.*

Ex. 80—E. H.

Published Dec. 17, '92.

Report of the Condition of the Capital Nat'l Bank, at Lincoln, in the State of Nebraska, at the Close of Business Dec. 9, '92.

RESOURCES.

Loan- & discounts	$768,601 44
Overdrafts, secured & unsecured	6,217 74
United States bond, to secure circulation	50,000
Stocks, securities, etc	325 00
Due from approved reserve agents	107,090 01
" " other nat'l banks	17,800 33
" " State banks and bankers	5,394 72
Banking-house furniture & fixtures	5,770 00
Other real estate & mortgages owned	38,617 92

Current exp. & taxes paid		$14,286 28
Checks & other cash items		3,698 56
Exchange for clearing-house		8,841 16
Bills of other banks		2,355 00
Fractional paper currency, nickels & cent		298 71
Specie		26,789 50
Legal-tender notes		17,431 00
Redemption funds with U. S. 5 per cent. of circulation		1,350 00
Total		$1,074,867 37

246 LIABILITIES.

Capital stock paid in		$300,000 00
Surplus fund		6,000 00
Undivided profits		21,180 75
National bank notes outstanding		45,000 00
Individual dep. subj. to check	356,139 33	
Demand cert. of deposit	158,545 88	
Due to other national banks	81,574 14	
Due to State banks & bankers	47,372 89	
		643,632 24
Notes & bills rediscounted		59,054 38
Total		$1,074,867 37

STATE OF NEBRASKA, }
County of Lancaster, } ss:

I, R. D. Outcalt, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed and sworn to before me this 15th day of December, 1892.

HAL. C. YOUNG,
Notary Public.

Ex. 81—E. H.

C. W. MOSHER,
C. E. YATES,
R. C. PHILLIPS,
Directors.

Correct.
Attest.

I, E. J. Hedges, do hereby certify that all of the exhibits attached to this testimony and being copies of records and books of the Capital National Bank of Lincoln, Nebraska, are true and correct copies of the books, records and entries which were offered in evidence herein by counsel for complainant or respondent, and that by agree-

ment between counsel for complainant and respondent, said copies are inserted in this evidence and attached thereto, in place of the originals thereof.

In witness whereof I have hereunto set my hand and official seal at Lincoln, Nebraska, this 30th day of March, A. D. 1895.

[SEAL.] ——— ———,
Notary Public.

My commission expires March 28, 1899.

247 Upon the back of said testimony appear indorsements in the words and figures following, to wit:

No. 69, "Q." Kent K. Hayden, receiver, *vs.* Ambrose P. S. Stuart *et al.* Testimony on behalf of the complainant. Rec'd and filed April 8, 1895, and opened by order of court April 16, 1895. E. D. Frank, clerk.

Thereupon afterwards, at the January term of said court, on the 19th day of April, 1895, the following proceedings were had and done in said case, as appears of record on folio —, Journal "T" of said court, to wit:

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln,
vs.
AMBROSE P. S. STUART *et al.* } 69, "Q."

On motion of C. C. Flansburg, solicitor for said defendant Ambrose P. S. Stuart, leave is hereby granted by the court to file answer to the cross-bill of complaint herein instanter, and cross-complainant is rule- to file replication thereto instanter, which is done.

(S'g'd) JOHN A. RINER, *Judge.*

Thereupon afterwards, to wit, on the said 19th day of April, 1895, answer of respondent, Ambrose P. S. Stuart, to cross-bill was filed in said case, which said answer is in the words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska, Complainants,
vs.
AMBROSE P. S. STUART, AUGUSTUS T. GRUETTER, and CHARLES F. JOERS (Copartners as Gruetter & Joers), Respondents.

Answer of Respondent Ambrose P. S. Stuart to the Cross-bill of Complaint of Cross-complainant.

This respondent now and at all times hereafter, saving to himself all and all manner of benefit or advantage of exception, or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or

so much thereof as this respondent is advised that it is material or necessary for him to make answer thereto, answering sayeth:

248 That on the 16th day of December, 1892, this respondent was the owner and holder of, and had standing in his name one hundred fifty shares of capital stock of the said Capital National bank, upon the books of the said association, and that on said day he entered into a contract with his said codefendants Augustus T. Gruetter and Charles F. Joers firm name of Gruetter & Joers by the terms of which he agreed to purchase, and did purchase of the said Gruetter & Joers their certain brick business block, situated on lots D, E, & F, subdivision of lots five (5) and six (6), of block thirty-nine (39), of the original plat of Lincoln, Nebraska, at an alleged and agreed consideration of $67,500.00.

That there was upon said building at said time a valid existing mortgage indebtedness of $30,000, drawing 6 per cent. interest, upon which there was accumulated interest at that time, which mortgage and interest it was agreed respondent should assume and pay off and discharge, as a part of said agreed consideration for said transfer.

It was further then and there agreed that the said one hundred fifty shares of capital stock of the said Capital National bank, then held and owned by this respondent Ambrose P. S. Stuart should be received by Augustus T. Gruetter and Charles F. Joers (copartners as Gruetter & Joers) at and as of the value of $18,000, and it was further agreed that the taxes thereon, amounting to $250, *was* to be paid by the respondent, and the balance of said consideration amounting to $18,124.34, agreed upon in the sale of said property, was to be paid in cash by this respondent; and on said day, and to bind the said bargain between the said parties, this respondent drew his check upon the said Capital National bank in favor of the said Gruetter & Joers, for the sum of one thousand dollars ($1,000) which check was presented by the said Gruetter & Joers to the said Capital National bank, and the money received thereon.

That afterwards and on the 22nd day of December, 1892, the said Augustus T. Gruetter and Charles F. Joers made, executed, and delivered to this respondent a good and sufficient deed to the said premises, pursuant to the said agreement theretofore entered into, and upon said date, and at the time of the delivery of said deed, this respondent wrote his name in blank upon the back of the 150 shares of stock of the said Capital National bank under the power of attorney thereon and delivered the same to the said Augustus T. Gruetter and Charles F. Joers, and the balance of said consideration due and owing to the said Augustus T. Gruetter and Charles *T.* Joers was paid in the manner following—that is to say, this respond-

249 ent had a certificate of deposit on the said Capital National bank, in amount $5,000, and another certain certificate of deposit, on the said Capital National bank of $2,050.00 and another certificate of deposit on the said Capital National bank of $2,050.00 and a certain bank book on the Industrial savings bank, of Lincoln, Nebraska, upon which there was then due $2,000, a certain savings-bank book on the Lincoln savings bank, on which there was due $1,426.84; a certain other certificate of deposit of

$3,000.00 on the Industrial savings bank, Lincoln, Nebraska; a certain other certificate of deposit of $1,250.00 on the Industrial savings bank, of Lincoln, Nebraska, and a one certain check of $312.50, drawn on the said Capital National bank, of Lincoln, Nebraska, and all of said certificates of deposit, bank books and checks were by this respondent made payable to the order of the said Augustus T. Gruetter and Charles F. Joers (partners as Gruetter & Joers) and were duly indorsed to them, and the said Augustus T. Gruetter and Charles F. Joers did present the same and did receive thereon the sum of $17,124.34, in cash, which, together with the $1,000 paid on the 16th day of December, 1892, at the time the bargain was made, made a total of $18,124.34, which this respondent paid to the said Augustus T. Gruetter and Charles F. Joers, at the time of the transfer of the said one hundred fifty shares of capital stock of the said Capital National bank. And said Gruetter and Joers still retain said sums of money and have never offered to return the same and have never tendered it back to this respondent. That the interest upon said mortgage, amounting to $900.00, and the taxes upon said premises, amounting to $250.00, was paid by this respondent upon the completion of the said trade and the delivery of the said deed to this respondent.

That the said Augustus T. Gruetter and Charles F. Joers (copartners as Gruetter & Joers) at the time of the said transfer were engaged in the business of retail furniture sellers, in the city of Lincoln, Nebraska, and were not at this time, as this respondent has been informed and believes, and so answers upon information and belief, insolvent and pecuniarily irresponsible, as charged in complainant's bill, but respondent charges the fact to be that at the time of said transfer of the said Capital Notional bank stock, said respondent had no knowledge whatever of the financial condition of the said Augustus T. Gruetter and Charles T. Joers (partners as Gruetter & Joers), but the said Gruetter & Joers had at that time a stock of furniture and carpets of about the value of $20,000.00, and this respondent paid to them, together with the said bank stock, the sum of $18,124.34 in cash, and believed them to be solvent.

250 And said respondent further says that he had no knowledge whatever of the condition of the said bank, nor did he know that the said bank was insolvent, but at the time of the transfer of said shares of stock this respondent believed the bank to be in a good condition and perfectly solvent, and at the time of said transfer, this answering defendant had no expectation or anticipation of any failure of the said bank, or change in its condition; nor did he have any expectation of the enforcement of his liability as a shareholder of the said bank, but made the said transfer to the said Augustus T. Gruetter and Charles F. Joers (partners as Gruetter & Joers) in good faith and for a valuable consideration, and that at the time of the said transfer the said Gruetter & Joers were in possession of the said business property of the value of $67,500, and that the stock of furniture and carpets at that time in their possession was of the value of $30,000.00, and respondent paid to them, when he delivered said bank stock, the sum in cash of

$18,124.34, and respondent had no reason to believe nor did he believe that the said defendants Augustus T. Gruetter and Charles F. Joers (of the said firm of Gruetter & Joers) were insolvent or in contecplation of insolvency, but believed, and still believes, that they were at that time perfectly solvent and able to respond to any call for an assessment upon the stock had it then been made.

That the said transfer of the said bank stock upon the books of the said Capital National bank was made by some other person than this respondent; that upon the sale and transfer being made as aforesaid respondent delivered the said certificate of stock, duly indorsed in blank to the said Augustus T. Gruetter & Charles F. Joers (copartners as Gruetter & Joers), since which time it has been out of his possession and in the possession of the said Gruetter & Joers.

That the complainant herein has made no attempt or effort to collect the said assessment from the said Augustus T. Gruetter and Charles F. Joers (partners as Gruetter & Joers), although the legal title to the said shares of stock is in the said Gruetter & Joers, and not in this respondent.

That on or about the 23rd day of January, 1893, the said defendants Gruetter & Joers commenced an action in the district court of Lancaster county, Nebraska, against this respondent, which is still pending and undetermined, affirming and alleging the validity of the said contract of the said one hundred fifty shares of stock to them, and seeking damages against this respondent, by reason of the said one hundred fifty shares of bank stock having been rendered worthless, because of the insolvency of the said
251 Capital National bank, and this respondent denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other *answer*, cause or thing in the said complainant's bill of complaint contained material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge or belief of this respondent; all of which matters and things this respondent is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be dismissed of his costs and charges in this behalf most (*most*) wrongfully sustained.

AMBROSE P. S. STUART,
By C. C. FLANSBURG,
His Solicitor.

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 14th day of March, 1894, before me, the undersigned, a notary public, duly commissioned and qualified in and for said county, appeared Ambrose P. S. Stuart, who, being duly sworn according to law, on his oath says that the allegations in the foregoing answer are true.

Subscribed in my presence and sworn to before me this 14th day of March, 1894.

——— ———.

Upon the back of said answer appear indorsements in the words and figures following, to wit: No. 69 "Q." Circuit court of the United States for the district of Nebraska. Kent K. Hayden (receiver), plaintiff, *vs.* Ambrose P. S. Stuart *et al.*, defendants. Answer of respondent Ambrose P. S. Stuart to cross-bill. Filed Apr. 19, 1895. Elmer D. Frank, clerk. C. C. Flansburg, solicitor for respondent.

Thereupon afterwards, to wit, on the said 19th day of April, 1895, a replication was filed in said case; which said replication is in the words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska.

KENT K. HAYDEN, Receiver, etc., Compl't,
vs.
AMBROSE P. S. STUART *et al.*
} In Equity. No. 69, "Q."

The Replication of Augustus T. Gruetter and Charles F. Joers, Cross-complainants, to the Answer of Ambrose P. S. Stuart, Defendant.

These repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and ad-
252 vantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver, maintain and prove their said cross-bill of complaint to be true, certain and sufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied is true; all of which matters and things these repliants — and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by *his* said cross-bill of complaint they have already prayed.

HARWWOD, AMES & PETTIS,
F. *Solicitors for Plaintiff.*

Upon the back of said replication appear indorsements in the words and figures following. to wit: No. 69 "Q." U. S. circuit court, district of Nebraska. In equity. Kent K. Hayden, receiver of the Capital National Bank of Lincoln, *vs.* Ambrose P. S. Stuart *et al.* Replication. Filed Apr. 19, 1895. Elmer D. Frank, clerk. Harwood, Ames & Pettis, solicitor- for plaintiff.

Thereupon afterwards, at the January, 1895, term of said court, on the 23rd day of April, 1895, the following proceedings were had

and done in said case, as appears of record on folio 715, Journal "T" of said court, to wit:

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska, Plaintiff, *vs.* AMBROSE P. S. STUART, AUGUST T. GRUETTER, and Charles F. Joers, Copartners as Gruetter & Joers, Defendants.	69, "Q." Original Bill.
AUGUST T. GRUETTER & CHARLES F. JOERS, Co-partners as Gruetter & Joers, Cross-complainants, *vs.* AMBROSE P. S. STUART, KENT K. HAYDEN, Receiver, Defendants.	Cross-bill.

This cause came on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed as follows, to wit: That on and prior to the third day of January, 1893, the defendant Ambrose P. S. Stuart was the owner of and had standing upon the books of the Capital National Bank of Lincoln, Nebraska, in his
253 name one hundred fifty (150) shares of the capital stock of said bank, described in the original bill of complaint and in the cross-bill in this cause, and on or about the sixteenth day of December, 1892, and for more than eight years prior to that date the said defendant Ambrose P. S. Stuart, had been, and was the owner of said one hundred and fifty (150) shares of the capital stock of said bank, as appeared by the books of said bank, and during all of said period he was a member of the board of directors and of the finance committee of said bank. That on the said sixteenth day of December, 1892, and the third day of January, 1893, the said defendant Stuart had knowledge of the then existing insolvency of said Capital National bank. That at the time of the transfer of the said one hundred fifty (150) shares of stock to the cross-complainants August T. Gruetter and Charles F. Joers, mentioned in the bill and in the cross-bill, said defendant Stuart represented to said cross-complainants Gruetter and Joers that said bank was in a solvent and prosperous condition. That said representation of said defendant Stuart to said cross-complainants Gruetter and Joers, was made for the purpose of inducing said cross-complainants Gruetter and Joers to purchase the said one hundred fifty (150) shares of stock, and for the purpose of evading and escaping his liability as a stockholder for an assessment on the said one hundred fifty (150) shares of stock of said bank.

It is further ordered, adjudged and decreed, that the said sale, assignment and transfer of said one hundred fifty (150) shares of stock of the said Capital National bank and all and every of them, from said defendant Ambrose P. S. Stuart to the cross-complainants August T. Gruetter and Charles F. Joers was wholly void as against the said complainants Kent K. Hayden, receiver, and the said cross-

complainants Gruetter & Joers; and that said sale, assignment and transfer of said shares of stock, and all and every of them be, and the same is hereby, set aside, cancelled and held for naught, and that said transfers of stock be reinstated upon the books of the said Capital National bank in the name of the said defendant Ambrose P. S. Stuart, who is declared to be the holder and owner thereof.

It is further ordered, adjudged and decreed, that the said defendant Ambrose P. S. Stuart, within twenty days from date of this decree, shall pay to the complainant Kent K. Hayden, receiver, the full amount of the assessment, to wit: $100.00 per share, made against the said one hundred fifty (150) shares of stock by the Comptroller of the Currency, and that said Kent K. Hayden, receiver, recover from the said Ambrose P. S. Stuart said sum of fif-
254 teen thousand (15,000) dollars, together with interest at the rate of seven per cent. per annum, from the tenth day of July, 1893, being in the aggregate the sum of sixteen thousand eight hundred seventy-five & $\frac{42}{100}$ ($16,875.42) dollars.

It is further ordered, adjudged and decreed, that the said defendant Ambrose P. S. Stuart shall, within twenty days from the date of this decree, make full restitution and payment to the said cross-complainants Gruetter & Joers — the amount of the purchase price of said stock, mentioned in the cross-bill, to wit: the sum of eighteen thousand ($18,000) dollars, together with interest thereon at the rate of seven per cent. per annum, from the third day of January, 1893, being in the aggregate the sum of twenty thousand nine hundred five ($20,905.00) dollars.

It is further ordered, adjudged and decreed, that the said cross-complainants Gruetter & Joers be relieved from all liability to the said complainant Kent K. Hayden, receiver, for and on account of any assessment authorized to be made on said one hundred fifty (150) shares of stock by the Comptroller of the Currency, and in case the said defendant Stuart shall neglect within the time aforesaid to pay each of the aforesaid sums of money, together with the costs of this suit, to be taxed by the clerk, that execution shall issue therefor.

(Signed) JOHN A. RINER, *Judge.*

Thereupon afterwards, to wit: on the 30th day of April, 1895, petition in appeal & assignment of errors were filed in said case; which said petition in appeal and assignment of errors are in the words and figures following, to wit:

Petition in Appeal.

In the Circuit Court of the United States within and for the District of Nebraska.

KENT K. HAYDEN (Receiver), Complainant,
vs.
AMBROSE P. S. STUART *et al.*, Respondents.

The respondent Ambrose P. S. Stuart, by his solicitor, C. C. Flansburg, feeling himself aggrieved by the order and judgment entered

on the — day of April, 1895, in the above-entitled proceeding, does hereby appeal from the said order to the circuit court of appeals for the eighth circuit, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said judgment is made, duly authenticated, may be sent to
255 the circuit court of appeals for the eighth judicial circuit of the United States.

C. C. FLANSBURG,
Solicitor for Ambrose P. S. Stuart, Respondent.

Assignment of Errors.

In the Circuit Court of the United States within and for the District of Nebraska.

KENT K. HAYDEN (Receiver), Complainant,
vs.
AMBROSE P. S. STUART *et al.*, Respondent.

And now, to wit, on this 27th day of April, 1895, before the honorable judges of the said circuit court, comes Ambrose P. S. Stuart, by his solicitor, C. C. Flansburg, and says that in the record and proceedings aforesaid, and the said decree rendered, there is manifest error as against the just rights of this respondent for the following reasons:

First. The court erred in holding the said respondent Ambrose P. S. Stuart liable simply because he was a director, although without any actual notice of the condition of the said bank.

Second. The court erred in rendering judgment for the receiver.

Third. The court erred in holding that the said transfer was fraudulent, and made on behalf of the said Stuart with the intent and for the purpose of escaping his statutory liability.

Fourth. The court erred in ordering the said shares of stock to be entered upon the books of the bank in the name of the said Ambrose P. S. Stuart.

Fifth. The court erred in holding that the said transfer was void as to the bank.

Sixth. The court erred in giving any relief to Gruetter & Joers on their cross-bill, as the same was without equity, and did not state facts sufficient to warrant relief in a court of equity.

Seventh. The court erred in rendering a judgment against Ambrose P. S. Stuart and in favor of Gruetter & Joers for the value of said stock.

Eighth. The court erred in denying to respondent Stuart the constitutional right of a jury upon the action for damages alleged in the cross-bill of Gruetter & Joers.

256 Ninth. The court erred in assuming jurisdiction of the said cross-bill brought by Gruetter & Joers against the said respondent Stuart.

Tenth. The court erred in ordering the said respondent Stuart to

pay the value of said stock, thereby making a new contract for the parties.

Wherefore respondent prays that said decree may be reversed and vacated in accordance with the prayer and request in the said respondent's answer herein set forth.

C. C. FLANSBURG,
Solicitor for Respondent Stuart.

4 May, 1895.—Appeal allowed as prayed for above.
ELMER S. DUNDY, *Judge.*

Upon the back of said petition in appeal and assignment of errors appear indorsements in the words and figures following, to wit: In equity. No. 69, "Q." Circuit court of the U. S. for the district of Nebraska. Kent K. Hayden, receiver, complainant, *vs.* Ambrose P. S. Stuart *et al.* Respondents' petition in appeal & assignment of errors. Filed Apr. 30, 1895. Elmer D. Frank, clerk. C. C. Flansburg, att'y for respondent Stuart.

Thereupon afterwards, to wit, on the 4th day of May, 1895, a citation was duly issued in said case, and returned and filed May 6, 1895, the following of which is the original:

THE UNITED STATES OF AMERICA:

To Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska; Augustus T. Gruetter, and Charles F. Joers, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Ambrose P. S. Stuart is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in
257 said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Elmer S. Dundy, judge of the circuit court of the United States for the district of Nebraska, this 4th day of May, in the year of our Lord one thousand eight hundred and ninety-five.

Seal United States Circuit Court, District of Nebraska.

ELMER S. DUNDY,
United States District Judge for the District of Nebraska.

THE STATE OF NEBRASKA, }
Lancaster County. }

I hereby enter a voluntary appearance in the United States circuit court of appeals in the within case and waive the issuance and service of this citation and notice, and hereby accept service thereon.

KENT K. HAYDEN, *Receiver,*
By CUBB & HARVEY,
His Solicitors.
AMES & PETTIS,
Solicitors for Gruetter & Joers.

No. 69, Q. United States circuit court, district of Nebraska. Ambrose P. S. Stuart *vs.* Kent K. Hayden, receiver, etc. Citation. Filed May 6, 1895. Elmer D. Frank, clerk.

Thereupon afterwards, to wit, on the 11th day of May, 1895, a bond was filed in said case; which said *the* bond is in the words and figures following, to wit:

Know all men by these presents that we, Ambrose P. S. Stuart — Martha E. Stuart, are held and firmly bound unto Kent K. Hayden, as receiver of the Capital National Bank of Lincoln, Nebraska; Augustus T. Gruetter, and Charles F. Joers in the full and just sum of fifty thousand dollars, to be paid to the said Kent K. Hayden, as receiver of the Capital National Bank of Lincoln, Nebraska; Augustus T. Gruetter, & Charles F. Joers, — heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 4th day of May, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at the January term, A. D. 1895, of the circuit court of the United States for the district of Nebraska, in a
258 suit depending in said court between Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, plaintiff, and Ambrose P. S. Stuart, Augustus T. Gruetter, & Charles F. Joers, defendants, judgment was rendered against the said Stuart in favor of said Kent K. Hayden, and on the 22nd day of April, and also on same day, a judgment was rendered against said Stuart in favor of Augustus T. Gruetter and the said Charles F. Joers, and the said Stuart has obtained an order allowing appeal of the said court to reverse the judgments & decrees in the aforesaid suit, and a citation directed to the said Kent K. Hayden, as receiver of the Capital National Bank of Lincoln, Nebraska; Augustus T. Gruetter, and Charles F. Joers, citing and admonishing them and each of them to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation.

Now, the condition of the above obligation is such that if the said Ambrose P. S. Stuart shall prosecute said appeal to effect and answer

all damages and costs if he fails to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

AMBROSE P. S. STUART. [SEAL.]
MARTHA E. STUART. [SEAL.]

Sealed and delivered in presence of—
—— ——.

Approved by—
ELMER S. DUNDY, *Judge.*

11 May, 1895.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

Ambrose P. S. Stuart on his oath says he is the owner of and has standing in his own name farm lands and other real estate in the counties of Lancaster, Seward, Merrick, York, Saunders, and Antelope, in said State, free of encumbrance and liens; that said farm lands are about 1,900 acres, and worth at a cash (valuation) $50,000; that the other real estate is city property in Lincoln, Nebraska; that he is worth over and above all debts, liabilities, and exemptions the sum of $150,000.

AMBROSE P. S. STUART.

Subscribed in my presence and sworn to before me by Ambrose P. S. Stuart this 4th day of May, 1895.

VERNE L. L. LAFFERTY,
[SEAL.] *Notary Public, Lancaster County, Neb.*

No. 69, "Q." United States circuit court, district of Nebraska. Bond. $50,000.00. Filed May 11, 1895. Elmer D. Frank, clerk.

259 THE STATE OF NEBRASKA, } ss:
Lancaster County, }

Martha E. Stuart on her oath says she has standing in her own name free of encumbrance 320 acres in Lancaster county, Neb., 160 acres in Franklin county, Nebraska, and other real estate in the city of Lincoln, Nebraska, consisting of inside & improved property, and personal property consists of secured notes and mortgages. That she is worth over all debts and liabilities and exemptions the sum of $80,000.

MARTHA E. STUART.

Subscribed & sworn to before me by Martha E. Stuart this 4th day of May, 1885.

[SEAL.] VERNE L. LAFFERTY,
Notary Public, Lancaster Co., Neb.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the foregoing

folios from one to four hundred & thirty-eight, contain true and faithful transcripts of all the pleadings and proceedings of record and on file in said court in the case of Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Neb., complainant, *vs.* Ambrose P. S. Stuart, defendant, and August T. Gruetter and Charles F. Joers, copartners as Gruetter and Joers, cross-complainants, *vs.* Ambrose P. S. Stuart *et al.*, defendants, and that a copy of the citation issued therein, duly certified, has been lodged and remains in my said office as such clerk.

Seal United States Circuit Court, District of Nebraska.

Witness my hand and the seal of said circuit court, at Omaha, in said district, this 21st day of June, A. D. 1895.

ELMER D. FRANK, *Clerk.*

Filed Jun- 26, 1895.

JOHN D. JORDAN, *Clerk.*

260 And on the first day of July, A. D. 1895, an appearance of counsel for appellant was filed in the clerk's office of said circuit court of appeals in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1895.

A. P. S. STUART, Appellant,
vs.
KENT K. HAYDEN, Receiver, *et al.* } No. 666.

The clerk will enter my appearance as counsel for the appellant.

C. C. FLANSBURG,
Counsel for Ambrose P. S. Stuart, Appellant.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1895. No. 666. A. P. S. Stuart, appellant, *vs.* Kent K. Hayden, receiver, *et al.* Appearance. Filed Jul- 1, 1895. John D. Jordan, clerk. C. C. Flansburg, Lincoln, Neb., counsel for appellant.

And on the twenty-eighth day of August, A. D. 1895, an appearance of Mr. G. M. Lambertson as counsel for appellees was filed in the clerk's office of said circuit court of appeals in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1895.

AMBROSE P. S. STUART, Appellant,
vs.
KENT K. HAYDEN, Receiver, &c., *et al.* } No. 666.

The clerk will enter my appearance as counsel for the appellees.

G. M. LAMBERTSON.

261 Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1895. No. 666. Ambrose P. S. Stuart, appellant,

vs. Kent K. Hayden, receiver, &c., *et al.* Appearance. Filed Aug. 28, 1895. John D. Jordan, clerk. G. M. Lambertson, Lincoln, Neb., counsel for appellees.

And on the thirty-first day of August, A. D. 1895, an appearance of counsel for appellees, Gruetter and Joers, was filed in the clerk's office of said circuit court of appeals in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1895.

AMBROSE P. S. STUART, Appellant,
vs.
KENT K. HAYDEN, Receiver, &c., *et al.* } No. 666.

The clerk will enter *my* appearance as counsel for the appellees, Gruetter & Joers.

JOHN H. AMES &
E. F. PETTIS.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1895. No. 666. Ambrose P. S. Stuart, appellant, *vs.* Kent K. Hayden, receiver, &c., *et al.* Appearance. Filed Aug. 31, 1895. John D. Jordan, clerk. John H. Ames, E. F. Pettis, Lincoln, Neb., counsel for appellees.

And on the fourth day of September, A. D. 1895, an appearance of Amasa Cobb and A. E. Harvey, as counsel for appellees, was filed in the clerk's office of said circuit court of appeals in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1895.

AMBROSE P. S. STUART, Appellant,
vs.
KENT K. HAYDEN, Receiver, &c. } No. 666.

The clerk will enter *my* appearance as counsel for the appellees.

AMASA COBB.
A. E. HARVEY.

262 Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1895. No. 666. Ambrose P. S. Stuart, appellant, *vs.* Kent K. Hayden, receiver, &c. Appearance. Filed Sep. 4, 1895. John D. Jordan, clerk. Amasa Cobb, A. E. Harvey, Lincoln, Neb., counsel for appellees.

And on the twenty-first day of October, A. D. 1895, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1895.

MONDAY, *October* 21, 1895.

AMBROSE P. S. STUART, Appellant,
vs.
KENT K. HAYDEN, Receiver of the Capital National Bank, *et al.*, Appellees. } No. 666.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause having been called for hearing in its regular order, argument was commenced by Mr. C. C. Flansburg for appellant, continued by Mr. G. M. Lambertson for the receiver, and by Mr. John H. Ames for Gruetter and Joers, appellees, and concluded by Mr. C. C. Flansburg for appellant.

Thereupon this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

And on the thirtieth day of December, A. D. 1895, an opinion of said United States circuit court of appeals was filed in said cause in the following words, to wit:

263 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1895.

AMBROSE P. S. STUART, Appellant,
vs.
KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska; Augustus T. Gruetter, and Charles F. Joers, Appellees. } No. 666. Appeal from the Circuit Court of the United States for the District of Nebraska.

Mr. C. C. Flansburg for appellant.

Mr. G. M. Lambertson (Mr. F. M. Hall, Mr. Amasa Cobb, and Mr. A. E. Harvey were with him on the brief) for appellee, Hayden, receiver.

Mr. John H. Ames for appellees Gruetter and Joers.

Before Caldwell, Sanborn, and Thayer, circuit judges.

Statement.

On December 23, 1892, the Capital National Bank of Lincoln, Nebraska, was, and for eight years theretofore had been, a national banking association incorporated and doing business as such under the acts of Congress relative to national banks. It had a nominal capital of three hundred thousand dollars. On January 23, 1893, this banking association failed, and in March of that year Kent K. Hayden, one of the appellees, was appointed receiver of this bank by

the Comptroller of the Currency of the United States. When the bank failed in January, 1893, its assets were about nine hundred thousand dollars and its liabilities over fourteen hundred thousand dollars. From the year 1885 until its failure it had frequently suffered heavy losses. During this time it had accumulated worthless paper to the amount of more than three hundred thousand dollars and more than fifty thousand dollars of its capital had been tied up in real estate. The appellees Augustus T. Gruetter and
264 Charles F. Joers were copartners engaged in the furniture business at Lincoln, in the State of Nebraska, under the firm name of Gruetter & Joers. They owned a building in Lincoln and the ground on which it stood, which they traded to the appellant, Ambrose P. S. Stuart, for $67,500, on December 23, 1892. The appellant Stuart had been a stockholder and director of this banking association for many years, and was on December 23, 1892, the chairman of the finance committee of its board of directors. On that day he bought of Gruetter and Joers their building and the land on which it stood for the sum of $67,500, and paid for it by assuming a mortgage of $30,000 thereon, by transferring to them one hundred and fifty shares of the stock of this bank of the par value of $15,000, for the agreed price of $18,000, and by giving them about $19,500 in cash. On June 10, 1893, the Comptroller of the Currency of the United States found that in order to pay the debts of this banking association it was necessary to enforce the individual liability of its stockholders under section 5151 of the Revised Statutes, and thereupon he made an assessment upon the shareholders of the bank of an amount equal to the par value of the stock held by them respectively, and directed the receiver, Hayden, to enforce this liability by suit if necessary. The receiver thereupon exhibited his bill in the court below against the appellant Stuart, in which he alleged that the transfer of his stock on December 23, 1892, was made with a knowledge of the failing condition and insolvency of the bank, for the purpose of defrauding its depositors and creditors and of escaping from the liability imposed upon him by section 5151 of the Revised Statutes; that the transferees, Gruetter and Joers, were irresponsible and unable to discharge the liability imposed by the ownership of the stock, and he prayed that the transfer might be held void as to the creditors and depositors of the bank and the receiver and that the latter might recover of the appellant Stuart the fifteen thousand dollars assessed upon this stock. Stuart interposed a demurrer on the ground, among others, that Gruetter and Joers were not made parties to the bill. This demurrer was sustained with leave to amend, and an amended bill was filed in which Gruetter and Joers were made parties to the suit and substantially the same allegations as in the original bill were reiterated. Stuart answered this bill, admitted the trade of the stock for the real estate, but denied that this trade was made for the purpose of defrauding the creditors or depositors of the bank or for the purpose of escaping his individual liability. The defendants Gruetter and Joers answered. Their answer was in effect an admission of the averments of the bill. After this answer had been filed, they prayed

and obtained permission to file a cross-bill. In their cross-bill they alleged in substance that they were induced to make this trade by the false representations of the value of the stock and the financial condition of the bank made to them by the appellant Stuart, and they prayed that the transfer and assignment of the stock might be wholly canceled and set aside by decree of the court; that they might be released from any liability by reason thereof, and
265 that Stuart might be adjudged to make a full restitution to them of the sum of eighteen thousand dollars paid by them to him for the purchase of said stock by the conveyance of their block, but they did not tender or offer to restore to him the nineteen thousand five hundred dollars in cash, which they had received as a part of the purchase price of the block, or to cause him to be released from his obligation to pay the mortgage of thirty thousand dollars which was secured thereon. The appellant, Stuart, demurred to this cross-bill on the grounds, among others, that the bill did not state such a case as in any manner constituted a defense to the original bill or a ground for any relief against the complainant in that bill, and that it attempted to litigate an independent matter between the respondents to the original bill without interposing this matter as a defense to the original bill and without in any way connecting the subject-matter of the cross-bill with the matter set forth in the original bill. The court overruled this demurrer, testimony was taken, and after final hearing the court entered a decree: first, that the transfer of the one hundred and fifty shares of stock from the appellant Stuart to the appellees Gruetter and Joers was void as against the receiver, Kent K. Hayden, and that Stuart should pay to the receiver the full amount of the assessment upon that stock, together with interest thereon at seven per cent. per annum from the 10th day of July, A. D. 1893; and, second, that the transfer of said stock was void as against the appellees Gruetter and Joers; that it should be set aside, canceled and held for naught; that the stock should be reinstated upon the books of the Capital National bank in the name of Stuart, and that said Stuart should pay to the appellees Gruetter and Joers eighteen thousand dollars with interest at seven per cent. from the third day of January, 1893. Stuart appealed to this court from this decree.

SANBORN, J., after stating the facts as above, delivered the opinion of the court:

The capital, the unpaid subscriptions to the capital stock, and the liability of the holders of stock, that is paid for, to pay an additional amount equal to the par value of their stock under section 5151 Revised Statutes, are all parts of a trust estate sacredly pledged for the security of the creditors of a national banking association organized under the national banking acts. The wilful destruction or diminution of any part of this trust estate, or the diversion of the proceeds of any of it from the creditors of the bank, is a fraud upon these creditors, and subjects its perpetrator to a suit by them or their legal representative for proper relief. Hayden *v.* Thompson *et al.* (decided

at the present term), — Fed. Rep., —, and cases cited; Peters *v.* Bain, 133 U. S., 670, 690.

A shareholder of a national banking association, who, for the purpose of escaping his individual liability under section 5151 of the Revised Statutes, transfers his shares in a failing bank to one who, for any reason, is unable to respond, as promptly and effectually as he was, to the liability their ownership imposes, commits a
266 fraud upon the creditors of the bank, renders his transfer voidable at their election and leaves himself subject to the individual liability imposed by the ownership of the stock if the creditors elect to pursue him. National Bank *v.* Case, 99 U. S., 628, 630, 632; Peters *v.* Bain, *supra;* Bowden *v.* Johnson, 107 U. S., 251, 261; Cook on Stockholders, sec. 265; Johnson *v.* Laflin, 5 Dillon, 65, 86; Davis *v.* Stevens, 7 Fed. Cas., 177, case No. 3653; Nathan *v.* Whitlock, 9 Paige's Ch. (N. Y.) 152; McClaren *v.* Franciscus, 43 Mo. 452; Marcy *v.* Clark, 17 Mass. 329.

After this bank had failed and this receiver had been appointed he was the proper party to, and the only party who could maintain a suit on behalf of the creditors of this bank to set aside the fraudulent transfer referred to in the bill and to enforce the individual liability of Stuart. Hayden, receiver, *v.* Thompson, *supra;* Bailey *v.* Mosher, 63 Fed. Rep., 488, 491; National Bank *v.* Colby, 21 Wall., 609; Hornor *v.* Henning, 93 U. S., 228; Stephens *v.* Overstoltz, 43 Fed. Rep., 771; National Exchange Bank *v.* Peters, 44 Fed. Rep., 13.

These propositions are too well settled to warrant more extended notice than their statement. By them the right of the receiver Hayden to enforce the individual liability under section 5151 against the appellant Stuart must be governed.

In order to determine whether or not this receiver was entitled to enforce this liability the court below was required to answer two questions, and two questions only. They were: (1) Did Stuart make this transfer of his stock to Gruetter and Joers on December 23, 1892, with knowledge, or with such notice as would if pursued with reasonable diligence have given him knowledge, that the bank was insolvent or its failure impending, and for the purpose of escaping from his individual liability on the stock? And (2) Did the transfer cause any damage to the creditors of the bank? The trial court after considering the evidence submitted answered both these questions in the affirmative, and the only question remaining for us to consider upon this branch of the case is whether there was sufficient testimony to fairly warrant these conclusions.

The record discloses these facts: The appellant, Stuart, was on December 23, 1892, and had been for many years, a stockholder, a director, and a member of the finance committee of the board of directors of this bank. He was in almost daily attendance at the bank's office and he occasionally examined some of its bills receivable. He owned one hundred and fifty shares of its stock of the par value of fifteen thousand dollars, and he had ten thousand three hundred dollars on deposit in its vaults. He was an intelligent, educated gentleman, a retired professor of chemistry, who had been

devoting his time and attention to loaning money and acting as a director of a bank. The bank had a nominal capital of three hundred thousand dollars, and for six years it had constantly paid semi-annual dividends on its stock. It had had many losses and heavy ones, but prior to February 2, 1892, no bad debts had been charged off, and on that day only $21,402.46 was charged off on ac-
267 count of bad debts, while only thirty thousand dollars of a surplus of about thirty-four thousand dollars was also stricken off. At the time the transfer of this stock was made in December, 1892, the bank had about seventy thousand dollars of overdue paper, and its books showed that it held about one hundred thousand dollars of overdue paper that it did not have at all. When the bank failed on January 23, 1893, one month after this transfer, its total assets were about nine hundred thousand dollars and its total liabilities were $1,463,016.17. $660,600 of these assets were bills receivable. Of these, bills to the amount of $68,596.82 were good, bills to the amount of $141,393.27 were doubtful, and bills to the amount of $319,611.90 were worthless. The bank had met with early, frequent, and disastrous losses. It had lost $20,300 by the failure of Donnell, Lawson & Simpson in 1885. Stuart was aware of this failure and knew that there was a loss by it, but did not know the amount of the loss and did not examine the books to learn how heavy it was. It had lost $14,000 by the failure of the Sherman County Banking Company. Stuart knew that there was such a loss, but did not know its amount. It held defaulted paper to the amount of $40,000 or $50,000 which resulted from the failure of a banker named Small at Edgar, Nebraska, about 1886. Stuart knew that this loss had been made, but did not know its amount and had been told by some of the officers of the bank that the latter had obtained real estate enough to nearly even it up. The bank held bogus and worthless paper of the Western Manufacturing Company, signed by "E. Hurlbut, Jr., manager," to the amount of about $125,000 when it failed in January, 1893. Two or three months before the transfer of this stock the appellant, in the discharge of his duties as a member of the board of directors and as chairman of its finance committee, had examined the bills receivable of the bank, but he could not remember whether there was then as much as one hundred thousand dollars of this paper in the bank, or whether or not there was any of it in the bank. One witness testified that at the time Stuart was negotiating for the purchase of the block from Gruetter & Joers, he told him that the price of the block in the trade was to be $67,500, and that he should trade in his bank stock if he traded at all. In answer to the remark of the witness that $67,500 was an exorbitant price and that he should rather have the bank stock, that he thought it better and safer, Stuart replied, "Well, we have to take some risk," and said that he did not like the way the officers of the bank were doing business; that he did not like the style; that a large share of the bank's capital was tied up in real estate, and that there was no prospect of dividends and he preferred to do his own business and manage his own affairs. Another witness testified that on the morning that the bank failed, in January, 1893, he told

her that he had not liked the management of the bank and had felt anxious about it for a long time; that he did not like the manager's going into the Western Manufacturing Company business and the stave business in Arkansas; that from that they went into the skating-rink business, and that when they went into the base-ball business he told them that they must stop and do a banking business.
268 This witness further testified that Stuart then told her that the capital of the bank was impaired and that he had known for quite a while that they had some bad debts, such as very poor paper there, amounting to about one hundred and thirty-six thousand dollars. When the appellant was interrogated regarding these conversations, his answer was substantially the same as that which he gave to the questions relative to his knowledge of the financial affairs of the bank, that he did not remember what was said, although he remembered the fact that he had had the conversations. This, then, is the record. A national bank which has a nominal capital of three hundred thousand dollars has made such losses that its assets are worth but nine hundred thousand dollars while its debts are more than fourteen hundred thousand dollars. It has $660,600 of bills receivable, over three hundred thousand dollars of which are worthless. A director of several years' standing, the chairman of the finance committee of its board of directors, whose business it is to examine and know the value of its assets and the amount of its liabilities, who did examine its bills receivable two or three months before this transfer, who knew that the bank had made heavy losses but did not know and did not examine the books to learn how heavy, who disliked the management and had long been anxious about it, who knew that there was no prospect of the bank's paying more dividends, that its capital was impaired, and that its managers had been in the stave business, the skating-rink business and the base-ball business against his protest, that a large portion of its capital was tied up in real estate, and that it had one hundred and thirty-six thousand dollars of very poor paper, transferred his stock at a premium of twenty per cent., and drew $10,300 in money that he had on deposit in the vaults of this bank to pay it to third parties in a trade for a building subject to a mortgage of thirty thousand dollars only thirty days before the bank disastrously failed. Upon this record the court below found that the transfer was made for the purpose of escaping the individual liability imposed by the ownership of the stock, notwithstanding the fact that the appellant himself testified that he had no such intention, that he supposed that the bank was solvent, and notwithstanding the fact that the proof was uncontradicted that the trade was proposed and sought, not by him, but by Gruetter and Joers.

When the court has considered conflicting evidence, and made its finding and decree thereon, they must be taken to be presumptively correct, and unless an obvious error has intervened in the application of the law, or some serious or important mistake has been made in the consideration of the evidence, the decree should be permitted to stand. Warren *v.* Burt, 12 U. S. App., 591, 600; 7 C. C. A., 105, 110; 58 Fed. Rep., 101, 106; Paxson *v.* Brown, 27 U. S. App., 29,

62; 10 U. S. App., 135, 144; 61 Fed. Rep., 874, 883; Kimberly *v.* Arms, 129 U. S., 512; Evans *v.* Bank, 141 U. S., 107; Furrer *v.* Ferris, 145 U. S., 132, 134.

After a careful examination of this evidence we are unwilling to hold that the trial court committed any mistake in the con-
269 sideration of the evidence applicable to the question under consideration or in the conclusion which it deduced therefrom. On the other hand, the facts and circumstances in evidence, in our opinion, well warranted the answer to this question given by the court below and would have led us to the same conclusion upon a trial *de novo*.

The second issue determined by the court below was whether or not the transfer of the stock caused any damage to the creditors of the bank. It is insisted by counsel for appellant, Stuart, that there could be no fraud upon the creditors of the bank unless the transfer was made to parties who were insolvent before the transfer was made; but this position is untenable. Suppose that Stuart had transferred his stock for eighteen thousand dollars to one who owed no debts and who was worth exactly eighteen thousand dollars, and the latter had paid him that amount for the stock; the result would have been that although the transferee was perfectly solvent before the transfer was made, he would have been utterly insolvent after it was effected and unable to pay a dollar upon the individual liability of fifteen thousand dollars which the ownership of the stock imposed. The creditors would have sustained the same damage as if the transfer had been made to one who was insolvent before he received it, and consequently the fraud upon them would have been the same in character and the same in effect. The question was not, therefore, whether the transferees were solvent or insolvent at the time of the transfer, but whether or not the individual liability of the transferees was as valuable as was that of the transfer-er. If it was not, the creditors were damaged and the fraud was actionable. The evidence leaves this question without doubt. Stuart was solvent and amply able to pay the fifteen thousand dollars in full and at once. Gruetter and Joers were solvent before, but insolvent and unable to pay the liability after the transfer. They paid to Stuart eighteen thousand dollars of their property for his stock which was worth nothing, and which imposed upon them a liability of fifteen thousand dollars. The operation decreased their assets eighteen thousand dollars and increased their liabilities fifteen thousand dollars. It diminished the net value of their estate thirty-three thousand dollars. This made them insolvent and rendered them unable to pay their individual liability on the stock in full. There was no error, therefore, in the answer given by the court to the second question, and that part of the decree which adjudged that the transfer of this stock was fraudulent and voidable as to the creditors of the bank and the receiver who represents them and that the receiver was entitled to recover of the appellant the fifteen thousand dollars assessed upon this stock by the Comptroller of the Currency, was right.

But were the appellees Gruetter and Joers entitled to a decree in this suit against their codefendant Stuart for the avoidance of the

transfer of the stock and the recovery of its estimated value in the trade for the real estate, on the grounds set forth in the paper which they style a "cross-bill"? Before entering upon the discussion of this question, let us, if possible, get a clear conception of the
270 character of this transfer and the relation to it of the parties represented in this suit. The creditors of the bank and their representative, the receiver, assert that this transfer was made by Stuart to escape his individual liability upon the stock, that they were damaged by the transfer, and that, therefore, it should be avoided as to them, and we have so held. But these facts furnish no ground for setting aside the transfer as to the transferees Gruetter and Joers. They allege in their bill, however, that they were induced to purchase and accept the transfer of the stock by fraudulent misrepresentations as to its value and as to the financial condition of the bank which Stuart made to them, and that on that ground the transfer should be set aside as to them. But these allegations, if well founded, would not authorize any court to set aside the transfer at the suit of the creditors or of the receiver. Such a transfer of stock may be valid as to the creditors and receiver and voidable as to the transferees (Florida Land & Imp. Co. *v.* Merrill, 52 Fed. Rep., 77, 81), and it may be valid as to the transferees and voidable as to the creditors and the receiver. Bowden *v.* Johnson, 107 U. S., 251, 261. Again, when this transfer had been completed and recorded in the books of the bank, it was not void as to any one. It was merely voidable at the election of those whom it defrauded. It was valid until disaffirmed, not void until affirmed. Oakes *v.* Turnquand, L. R. 2 H. L., 325, 344; Reese River Silver Mining Co. *v.* Smith, L. R. 4 H. L., 64; Upton *v.* Englehart, 3 Dillon, 496, 504.

Each one of those defrauded by this transfer, upon his discovery of the fraud, had the right to disaffirm this transaction, but silence or acquiescence affirmed it. It follows that some of those defrauded might affirm, while others might repudiate. The transfer then was valid as to all the parties to this suit until each disaffirmed it. The receiver disaffirmed it and filed his bill to avoid it as to himself and to collect of Stuart the assessment upon the stock transferred, on the ground that he had transferred it to escape his individual liability to the damage of the creditors of the bank. Stuart by his answer denied the material allegations of this bill. Gruetter and Joers answered that the allegations of the bill were true and consented that the relief for which it prayed should be granted. The question recurs: Were they, after they had made this answer, entitled, upon filing a pleading in this suit which alleged that the transfer of the stock was voidable as to them because they were induced to trade for it by the fraudulent misrepresentations of Stuart, to a decree that the transfer should be set aside as to them, that they were not liable for the assessment on the stock, and that they should recover of Stuart the amount which the stock was estimated to be worth in the trade?

A cross-bill is brought either to aid in the defense of the original suit or to obtain a complete determination of the controversies between the original complainant and the cross-complainant over the

subject-matter of the original bill. If its purpose is different from this, it is not a cross-bill although it may have a connection with the general subject of the original bill. It may not interpose
271 new controversies between codefendants to the original bill, the decision of which is unnecessary to a complete determination of the controversies between the complainant and the defendants over the subject-matter of the original bill. If it does so, it becomes an original bill and must be dismissed because there cannot be two original bills in the same case. Story's Equity Pleading, sec. 389; Cross *v.* De Valle, 1 Wall., 1, 14; Ayres *v.* Carver, 17 How., 591; Rubber Company *v.* Goodyear, 9 Wall., 807, 809; Stonemetz Printers' Machine Co. *v.* Brown Folding-machine Co., 46 Fed. Rep., 851; Fidelity Trust & Safety Vault Co. *v.* Mobile Street R'y Co., 53 Fed. Rep., 850, 852; McMullen *v.* Ritchie, 57 Fed. Rep., 104.

Tested by these rules, the pleading filed by Gruetter and Joers was not a cross-bill. It was not brought in aid of their defense to the original suit, for they had none. They confessed the allegations of the original bill. It was not necessary in order to obtain a complete determination of the controversies between the complainant and the defendants in the original suit over the subject-matter of the original bill—the liability for the assessment on this stock—for those issues must necessarily be completely disposed of by the decision of that suit. If, as the receiver claimed it should be, the transfer of the stock was avoided as to him by the decree in that suit, that would discharge Gruetter and Joers from all liability for the assessment upon the stock, for the transfer could not be void as to the receiver and impose a liability upon Stuart and valid as to the receiver and impose one upon Stuart's transferees at the same time. This pleading of Gruetter and Joers attempted to bring into this suit a new and independent controversy between the codefendants in the original suit, the decision of which depended upon facts not material to the issues between the complainant and any of the defendants, while the decision of the latter issues depended upon facts not essential to the determination of the new controversy between the codefendants which this pleading sought to import. It contained none of the essentials of a cross-bill and every characteristic of an original bill, except the statement of a cause of action, and that exception did not aid its sufficiency as a cross-bill. The demurrer to it should have been sustained.

There is another reason why this supposed cross-bill should be dismissed. Gruetter and Joers neither pleaded nor proved in this case a state of facts which would entitle them in any court to the rescission of the transfer of the stock and the recovery of its purchase price, which they asked in this pleading and obtained by this decree. They obtained this stock by this trade. They exchanged with Stuart a single piece of real estate in the city of Lincoln which they owned for this stock, nineteen thousand five hundred dollars in cash and the agreement of Stuart to pay a mortgage of thirty thousand dollars which they owed. They have sought in this suit, and the court below has granted to them by this decree, a rescission of the transfer of the stock and its reinstatement upon the books of the bank

in the name of Stuart and a recovery from him of eighteen thousand dollars, the value at which the parties estimated the stock in
272 the trade, with interest, while they still retained the nineteen thousand five hundred dollars in cash and the agreement of Stuart to pay the mortgage of thirty thousand dollars, and he retains the real estate. This part of this decree is a perfect *non sequitur*. Conceding that Gruetter and Joers were induced to make this trade by the fraudulent misstatements of Stuart, they could not rescind it in the part which was burdensome and affirm it in the part which was beneficial to them. They could not rescind it as to the stock and affirm it as to the cash. They must either rescind or affirm it altogether. One who is induced to make a sale or trade by the deceit of his vendee has a choice of two remedies upon his discovery of the fraud. He may affirm the contract and sue for his damages, or he may rescind it and sue for the property he has sold. The former remedy counts upon and affirms the validity of the transaction; the latter repudiates the transaction and counts upon its invalidity. The two remedies are utterly inconsistent, and the choice of one rejects the other, because a sale cannot be valid and void at the same time. Now the supposed cross-bill of Gruetter and Joers and the proof in this record show that they elected to affirm and did affirm the contract and sue for damages for the deceit, and these facts conclusively estop them from obtaining any relief on the ground of rescission. The sale or exchange was valid until disaffirmed. Upon the discovery of the fraud, they could not, if they would, avoid an immediate choice of an affirmance or a repudiation of the trade. If one who is induced to make a trade or sale by fraud would rescind it, he must immediately, upon his discovery of the fraud, announce his intention so to do, and return all the consideration he has received, to the end that the parties may be put *in statu quo* before subsequent transactions have made such action impossible. Silence, delay, vacillation, acquiescence, or the retention and use of any of the fruits of the sale or trade that are capable of restoration, for any considerable length of time after the discovery of the fraud, constitute a complete and irrevocable ratification of the transaction. Rugan *v.* Sabin, 10 U. S. App., 519, 531; 3 C. C. A., 578, 580; 53 Fed. Rep., 415, 418; Kinne *v.* Webb, 12 U. S. App., 137, 144; 4 C. C. A., 170, 174; 53 Fed. Rep., 34, 38; Scheftel *v.* Hays, 19 U. S. App., 220, 226; 7 C. C. A., 308, 312; 58 Fed. Rep., 457, 460; McLean *v.* Clapp, 141 U. S., 429; Grymes *v.* Sanders, 93 U. S., 55, 62.

The supposed cross-bill utterly fails to state a case for rescission because it does not show that Gruetter and Joers ever returned to Stuart the nineteen thousand five hundred dollars in cash which they received from this trade, or that they ever released Stuart from his agreement to pay the mortgage of thirty thousand dollars upon the property they conveyed. They could not rescind this trade and recover back that which they gave in exchange, or any part of it, while they retained at least forty-nine thousand five hundred dollars in value that they had received from it. The proof, if it were possible, is more fatal to them than the pleading. The record dis-

closes the fact that they made their election and chose to affirmatively ratify this transaction more than a year before they
273 filed this bill for its rescission. It shows that on January 23, 1893, they brought an action at law against Stuart in one of the courts in the State of Nebraska to recover of him damages to the amount of eighteen thousand dollars for his fraudulent misrepresentation of the value of this stock at the time of the trade. This was in effect an action for a part of the purchase price of the real estate which they had conveyed, although it was in form an action for deceit. It could be brought and maintained on the ground that the sale or trade of the real estate was valid and its title was vested in Stuart, and on no other theory. That suit is still pending. It was a distinct and affirmative ratification of the transfer of this stock, and the conveyance of the real estate, after full knowledge of all the facts, and it barred Gruetter and Joers of all right to rescind the trade thereafter. The result is that all that portion of the decree which grants to Gruetter and Joers any relief against the appellant Stuart was wrong.

The decree below must a rdingly be reversed without costs to either party, and the case n t be remanded to the court below, with instructions to enter a ecree to the effect that the transfer of the one hundred and fifty shares of stock from Stuart to Gruetter and Joers was fraudulent and voidable as to the receiver Hayden, that it be held for naught as to him, and that he recover of Stuart the assessment levied thereon, with his costs; that the appellees, Gruetter and Joers, are entitled to no relief against Stuart in this suit; that their supposed cross-bill be dismissed, and that Stuart recover of them his costs thereon. It is so ordered.

Filed December 30, 1895.

274 And on the thirtieth day of December, A. D. 1895, in the record of the proceedings of said circuit court of appeals is a decree in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1895.

MONDAY, *December* 30, 1895.

AMBROSE P. S. STUART, Appellant, *vs.* KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska; Augustus *F.* Gruetter, and Charles F. Joers, Appellees.	No. 666.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Nebraska and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and

decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed without costs to either party in this court.

It is further ordered that this cause be, and the same is hereby, remanded to the said circuit court, with directions to enter a decree to the effect that the transfer of the one hundred and fifty shares of stock from Stuart to Gruetter and Joers was fraudulent and voidable as to the receiver, Hayden; that it be held for naught as to him, and that he recover of Stuart the assessment levied thereon, with his costs; that the appellees Gruetter and Joers are entitled to no relief against Stuart in this suit; that their supposed cross-bill be dismissed, and that Stuart recover of them his costs thereon.

December 30, 1895.

275 And on the twentieth day of February, A. D. 1896, there was filed in the clerk's office of said circuit court of appeals a petition for and order allowing appeal and assignment of errors in the words and figures following, to wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

AMBROSE P. S. STUART, Appellant,
vs.
KENT K. HAYDEN, Receiver, *et al.*, Appellees.

STATE OF NEBRASKA, *Lancaster County,* } *ss:*

Ambrose P. S. Stuart, being first duly sworn, deposes and says that the amount in controversy in the above-entitled cause exceeds, exclusive of interests and costs, the sum of five thousand dollars ($5,000.00).

AMBROSE P. S. STUART.

Subscribed in my presence and sworn to before me this 19th day of February, A. D. 1896.

[SEAL.]

R. O. WILLIAMS,
Notary Public.

In the United States Circuit Court of Appeals, Eighth Circuit.

AMBROSE P. S. STUART, Appellant,
vs.
KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska; Augustus T. Gruetter, and Charles F. Joers, Appellees.

In Equity. No. 666.

The above-named appellant, Ambrose P. S. Stuart, conceiving himself aggrieved by the decree and opinion made, filed, and entered on the 30th day of December, 1895, in the above-entitled cause, does hereby appeal from said finding, order, and decree to the
276 Supreme Court of the United States for the reasons and on the grounds specified in the assignments of error filed here-

with, and he prays that this his appeal may be allowed; that the transcript of the record, proceedings, and papers upon which said order and judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated February 19th, 1896.

C. C. FLANSBURG,
Counsel for Appellant Stuart.

The foregoing claim of appeal is this day allowed.

(Signed) HENRY C. CALDWELL,
Circuit Judge.

Dated February 20, 1896.

In the United States Circuit Court of Appeals, Eighth Circuit.

AMBROSE P. S. STUART, Appellant,
vs.
KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska; Augustus T. Gruetter, and Charles F. Joers, Appellees.

Assignments of Error.

Now, on the 19th day of February, 1896, comes the said appellant, Ambrose P. S. Stuart, by C. C. Flansburg, his counsel, and says that the decree, finding, opinion, and judgment in said cause is erroneous and against the just rights of appellant Stuart, for the following reasons:

1. The court erred in holding the said appellant, Stuart, liable simply because he was a director and ought to have known, when in fact he had no actual notice of the condition of said bank.

2nd. The court erred in rendering judgment for the receiver and holding the appellant Stuart liable on said assessment levied by the comptroller.

277 3rd. The court erred in holding that said transfer was fraudulent and made on behalf of said Stuart with the intent and for the purpose of escaping his statutory liability.

4th. The court erred in holding that the said transfer was voidable as to the bank after it had found that the transferrees were solvent at the time of the transfer.

5th. The court erred in reversing the case and ordering a decree to be entered against Ambrose P. S. Stuart, thus and thereby making a new contract for the parties.

6th. The court erred in holding that said transfer was voidable as to the bank after it had expressly found that the transfer was valid as to the transferrees, and that they had by affirmative action confirmed the validity of said transfer.

7th. The court erred in not directing the receiver to collect from Gruetter & Joers, the transferrees, the amount of the assessment, it appearing that they were at the time of the bringing of the suit possessed of large amounts of personal property, more than sufficient to pay the assessment levied by the comptroller, and it also appear-

ing that Gruetter & Joers, the transferrees, with full knowledge of all the facts, had confirmed the validity of the transfer.

8th. The court erred in not awarding to the appellant Stuart his costs in reversing the decree of the court below, the circuit court having held that the transfer was void as to the bank having ordered a transfer of the shares of the stock to be entered upon the books of the bank in the name of Ambrose P. S. Stuart, when in fact, at the most, said transfer was only voidable, and the court had no jurisdiction to award the entering of said transfer upon the books of the bank, and this decree being erroneous, and so found by the circuit court upon a reversal thereof, appellant should recover his costs.

Wherefore the said appellant prays that the said decree be reversed; that the said court may be directed to enter a decree
278 relieving said appellant from all liability by reason of the transfer of said stock and awarding to him his costs.

C. C. FLANSBURG,
Counsel for Appellant.

Endorsed: No. 666. In the U. S. circuit court of appeals, 8th circuit. Ambrose P. S. Stuart, appellant, *vs.* Kent K. Hayden, receiver, *et al.*, appellees. Petition for and order allowing appeal to Supreme Court U. S. and assignments of error. Filed Feb. 20, 1896. John D. Jordan, clerk. C. C. Flansburg, counsel for appellant.

And on the fourth day of March, A. D. 1896, there was filed in the clerk's office of said circuit court of appeals a supersedeas bond on appeal in the words and figures following, to wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

AMBROSE P. S. STUART, Appellant,
vs.
KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska; Augustus T. Gruetter, and Charles F. Joers, Appellees.

Bond.

Know all men by these presents that we, Ambrose P. S. Stuart, as principal, and Martha E. Stuart and E. R. Smith, as surety, are held and firmly bound unto the appellees in the full and just sum of twenty thousand dollars ($20,000.00), to be paid to the said appellees, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of February, on the year of our Lord one thousand eight hundred and ninety-six.

279 Whereas lately, at the December term, A. D. 1895, of the United States circuit court of appeals for the eighth circuit, in a suit pending in said court between Ambrose P. S. Stuart, appellee, and Kent K. Hayden, as receiver of the Capital National Bank of Lincoln, Nebraska; Augustus T. Guetter, and Charles F. Joers,

appellees, a decree was rendered reversing the judgment and decree of the circuit court of the United States within and for the district of Nebraska, entered on the 23rd day of April, 1895, by which finding and judgment of the circuit court of appeals it was ascertained that there was error in said proceedings and the cross-bill of Gruetter & Joers was dismissed, and the judgment and decree of the circuit court of appeals determined that appellant was liable to pay the sum of fifteen thousand dollars ($15,000.00) to the said appellee, Kent K. Hayden, as receiver, and the said appellant, Ambrose P. S. Stuart has obtained an order allowing an appeal to reverse the said decree and a citation directed to the said appellees, citing and admonishing them and each of them to be and appear in the Supreme Court of the United States, to be holden in the city of Washington, on the — day of —— next:

Now, the condition of the above obligation is such that if the said Ambrose P. S. Stuart shall prosecute said appeal to effect and answer all damages and costs if he fails to make good his plea, then the above obligation to be void; else to be and remain in full force and virtue.

[SEAL.]

AMBROSE P. S. STUART.
MARTHA E. STUART.
E. R. SMITH,
PHILIP MANGER.

Signed and delivered in presence of—
R. O. WILLIAMS.

March 4, 1896, approved to operate as a supersedeas.
(Signed) HENRY C. CALDWELL,
U. S. Circuit Judge.

280 STATE OF NEBRASKA, } ss:
Lancaster County, }

Martha E. Stuart on her oath says that she has standing in her own name, free of encumbrance, three hundred and twenty acres of land in Lancaster county, Nebraska; one hundred and sixty acres of land in Franklin county, Nebraska, and real estate in the city of Lincoln, Nebraska, consisting of inside and improved property, and that she has personal property consisting of secured notes and mortgages; that she is worth, over all debts, liabilities, and exemptions, the sum of eighty thousand dollars ($80,000.00).

MARTHA E. STUART.

Subscribed and sworn to before me by Martha E. Stuart this 19th day of February, A. D. 1896.

R. O. WILLIAMS,
Notary Public.

[SEAL.]

STATE OF NEBRASKA, } ss:
Lancaster County, }

Ambrose P. S. Stuart on his oath says that he is the owner and has standing in his own name farm lands and real estate in the

counties of Lancaster, Seward, Merrick, York, Saunders, and Antelope, in said State; that said farm lands consist of nineteen hundred acres and are worth at a cash valuation $50,000; that he has other real estate in Lincoln, Nebraska, and that he is worth, over and above all debts and exemptions, the sum of one hundred thousand dollars ($100,000.00).

AMBROSE P. S. STUART.

Subscribed and sworn to before me by Ambrose P. S. Stuart this 19th day of February, A. D. 1896.

R. O. WILLIAMS,
[SEAL.] *Notary Public.*

281 STATE OF NEBRASKA, } ss:
Lancaster County, }

E. R. Smith, being first duly sworn, says that he has standing in his own name real estate, bank stock, cash, notes, and accounts, and is worth, over and above his debts and exemptions, the sum of ten thousand dollars ($10,000.00).

E. R. SMITH.

Subscribed in my presence and sworn to before me this 29th day of February, A. D. 1896.
My com. expires Nov. 17, 1898.

W. M. MORNING,
[SEAL.] *Notary Public.*

STATE OF NEBRASKA, } ss:
Lancaster County, }

Philip Manger, being first duly sworn, says that he is worth, over and above his debts, exemptions, and liabilities, the sum of ten thousand dollars ($10,000.00).

PHILIP MANGER.

Subscribed in my presence and sworn to before me this 2nd day of Febr'y, A. D. 1896.

R. S. MOCKETT,
[SEAL.] *Notary Public.*

Endorsed: In the U. S. circuit court of appeals, 8th circuit. Ambrose P. S. Stuart, appellant, *vs.* Kent K. Hayden, receiver, *et al.*, appellees. Supersedeas bond on appeal. Filed Mar. 4, 1896. John D. Jordan, clerk. C. C. Flansburg, counsel for appellant.

And on the fourth day of March, A. D. 1896, a citation on appeal was filed in the clerk's office of said circuit court of appeals in said cause, the original of which, with the acceptance of service endorsed thereon, is hereto attached and herewith returned.

282 THE UNITED STATES OF AMERICA:

To Kent K. Hayden, as receiver of the Capital National Bank of Lincoln, Nebraska; Augustus T. Gruetter, and Charles F. Joers, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, District of Columbia, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein Ambrose P. S. Stuart is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Henry C. Caldwell, circuit judge of the United States circuit court of appeals for the eighth circuit, this 20th day of February, in the year of our Lord one thousand eight hundred and ninety-six.

HENRY C. CALDWELL,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

I hereby accept service of the above and foregoing citation this 27th day of February, 1896.

KENT K. HAYDEN,
Receiver of the Capital National Bank of Lincoln,
By COBB & HARVEY,
Attorneys for Complainant.
AUGUST T. GRUETTER,
CHARLES F. JOERS,
By JOHN H. AMES, *Their Att'y.*

[Endorsed:] C. No. —. Ambrose P. S. Stuart, appellant, *vs.* Kent K. Hayden, receiver, *et al.* Citation. Filed Mar. 4, 1896. John D. Jordan, clerk.

283 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals, eighth circuit, do hereby certify that the foregoing 282 pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in the case of Ambrose P. S. Stuart, appellant, *vs.* Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, *et al.*, appellees, No. 666, December term, 1895, as the same remain upon the files and records of said United States circuit court of appeals.

I further certify that the original citation, with the acceptance of service thereon, is hereto attached and herewith returned.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this ninth day of March, A. D. 1896.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

284 Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at a term thereof begun and held at the United States court-house, in the city of St. Louis, Missouri, on the first Monday in December, it being the second day of December, A. D. 1895, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn, and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Be it remembered that on the twentieth day of February, A. D. 1896, an appeal to the Supreme Court of the United States was prayed by and allowed to Ambrose P. S. Stuart from a decree entered in said United States circuit court of appeals on the 30th day of December, A. D. 1895, in a certain cause wherein Ambrose P. S. Stuart was appellant and Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, *et al.* were appellees, No. 666, December term, 1895, which said appeal is now pending in said Supreme Court of the United States.

And on the twenty-seventh day of March, A. D. 1896, the appellant August T. Gruetter, Charles F. Joers, and Gruetter and Joers prayed and were allowed an appeal to the Supreme Court of the United States from the said decree entered on the 30th day of December, 1895, in said cause, the petition for appeal, assignment of errors, and order allowing said appeal being in the words and figures following, to wit:

285 In the Circuit Court of Appeals for the Eighth Judicial Circuit of United States, May Term, 1895.

AMBROSE P. S. STUART, Appellant,
vs.
KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska, and August T. Gruetter and Charles F. Joers, Appellees. } No. 666.

Petition for Appeal and Assignment of Errors for Appellees August T. Gruetter and Charles F. Joers.

The appellees August T. Gruetter and Charles F. Joers, defendants to the original bill of complaint and complainants in the cross-

bill in the circuit court, feeling themselves aggrieved by the order and judgment heretofore entered by this court in this cause, do hereby appeal from said order and judgment to the Supreme Court of the United States and pray that their said appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said judgment was made and entered, duly authenticated, may be sent to said Supreme Court.

And as reasons for and for the purposes of said appeal the said August T. Gruetter and Charles F. Joers now here, by their counsel, John H. Ames, make and assign the following assignments of errors prejudicial to them, which they allege to have intervened in and to be disclosed by said record, proceedings, and judgment:

First. The court erred in holding that the cross-bill of these defendants August T. Gruetter and Charles F. Joers does not state facts sufficient to confer upon the circuit court of the United States for the district of Nebraska jurisdiction in equity to grant the relief prayed for in said cross-bill.

Second. This court erred in holding that the evidence and testimony disclosed by the records in this cause do not disclose
286 facts sufficient to entitle these defendants August T. Gruetter and Charles F. Joers to the relief prayed for in their said cross-bill.

Third. This court erred in holding that the defendants August T. Gruetter and Charles F. Joers were or would not have been entitled to the relief for which they prayed in their cross-bill, except upon condition that they should rescind or offer to rescind the sale of their real estate to the appellant Stuart and restore or offer to restore to said Stuart the sum of nineteen thousand five hundred ($19,500) — and interest thereon paid them by said Stuart as part consideration of said sale.

Fourth. This court erred in holding that by delay or by beginning of an action in the State court or otherwise the defendants August T. Gruetter and Charles F. Joers had waived or abandoned the remedy sought or the relief prayed for in their said cross-bill or had made an election of remedies inconsistent with a demand for such relief in this suit.

Fifth. This court erred in entering a judgment directing the dismissal of the cross-bill of these defendant- August T. Gruetter and Charles F. Joers.

Sixth. This court erred in entering a judgment vacating or directing the vacation of the decree of the circuit court of the United States for the district of Nebraska in so far as said decree adjudged that the appellant Stuart should make restitution to said defendants in the sum of twenty thousand nine hundred five ($20,905.00) dollars.

Seventh. The court erred in entering a judgment vacating or directing the vacation of the decree of the circuit court of the United States for the district of Nebraska in so far as said decree adjudged that the sale, transfer, and assignment of the shares of the capital stock of the Capital National bank from the appellant Stuart to these defendants August T. Gruetter and Charles F. Joers was and

is void as against said Gruetter & Joers, and that the same be cancelled, set aside, and held for naught, and that said shares of stock be reinstated upon the books of the bank in the name of said appellant Stuart.

287 Wherefore these defendants August T. Gruetter and Charles F. Joers pray that the said appeal may be allowed, and that the said judgment and decree of this court may be in the respects aforesaid modified and reformed or be reversed, vacated, and set aside, and that the decree of the circuit court of the United States for the district of Nebraska may be in all things reinstated, affirmed, and enforced.

JOHN H. AMES,
Solicitors for Appellees, Respondents, and Cross-complainants August T. Gruetter and Charles F. Joers.

UNITED STATES OF AMERICA, *Eighth Circuit,* } *ss:*

On consideration of the foregoing petition it is now here ordered that an appeal to the Supreme Court of the United States be, and the same is hereby, allowed to the said Augustus T. Gruetter and Charles F. Joers, as prayed in said petition, and that the appeal bond herein be, and is hereby, fixed at the sum of five hundred dollars.

Dated March 27, 1896.

(Signed) AMOS M. THAYER,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed: In the circuit court of the United States. No. 666. Ambrose P. S. Stuart, appellant, *vs.* Kent K. Hayden, receiver, *et al.*, appellees. Petition for appeal and assignment of errors for appellees Gruetter & Joers and order allowing appeal. Filed Mar. 27, 1896. John D. Jordan, clerk. John H. Ames, solicitor for appellees August T. Gruetter and Charles F. Joers.

288 And on the twenty-seventh day of March, A. D. 1896, an appeal bond of the said Gruetter *et al.* was filed in the office of the clerk of said circuit court of appeals in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

AUGUST T. GRUETTER and CHARLES F. JOERS, Appellant-, } *vs.* AMBROSE P. S. STUART and KENT K. HAYDEN, Appellees. }

Know all men by these presents that we, August T. Gruetter and Charles F. Joers, as principals, and N. S. Harwood, as surety, all of the city of Lincoln, in the State of Nebraska, are held and firmly bound unto the above-named Ambrose P. S. Stuart and Kent K. Hayden in the sum of five hundred ($500) dollars, to be paid to the

said Ambrose P. S. Stuart and Kent K. Hayden; for the payment of which, well and truly to be made, we bind ourselves and each of us, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that whereas the above-named August T. Gruetter and Charles F. Joers have prosecuted an appeal to the Supreme Court of the United States to reverse a certain decree rendered in said United States circuit court of appeals for the eighth judicial circuit in a certain cause in which the said Ambrose P. S. Stuart was appellant and the said Kent K. Hayden and the above-named August T. Gruetter and Charles F. Joers were appellees in said last-named court:

Now, therefore, if the said August T. Gruetter and Charles F. Joers shall prosecute said appeal to effect and shall answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

289 Witness our hands, at Lincoln, Nebraska, on this 25th day of March, 1896.

AUGUST T. GRUETTER AND
CHARLES F. JOERS,
By JOHN H. AMES, *Their Attorney.*
N. S. HARWOOD.

Approved March 27, 1896.

(Signed) A. M. THAYER,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed: No. 666. Ambrose P. S. Stuart, appellant, *vs.* Kent K. Hayden, receiver *et al.* Appeal bond on appeal of Augustus T. Gruetter and Charles F. Joers. Filed Mar. 27, 1896. John D. Jordan, clerk.

And on the seventh day of April, A. D. 1896, a citation was filed in said cause, the original of which is hereto attached and herewith returned, in the following words, to wit:

290 THE UNITED STATES OF AMERICA:

To Ambrose P. S. Stuart and Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the U. S. circuit court of appeals for the eighth circuit, wherein August T. Gruetter and Charles F. Joers are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should

not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Amos M. Thayer, judge of the United States circuit court of appeals for the eighth circuit, this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and ninety-six.

AMOS M. THAYER,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

291 [Endorsed:] No. —. Supreme Court of the United States. August T. Gruetter and Charles F. Joers, appellants, *vs.* Ambrose P. S. Stuart *et al.* Citation on appeal. Filed Apr. 7, 1896. John D. Jordan, clerk.

LINCOLN, NEBRASKA, *March 4th*, 1896.

The subscribers acknowledge service of the within citation and enter their appearance to the within-named appeal in the Supreme Court of the United States.

KENT K. HAYDEN, *Receiver*,
By G. M. LAMBERTSON,
His Attorney.
C. C. FLANSBURG,
Counsel for Ambrose P. S. Stuart.

292 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing pages, numbered from one to seven, inclusive, contain full, true, and complete copies of the petition for appeal, assignment of errors, ordered allowing appeal, and appeal bond on the cross-appeal of August T. Gruetter, Charles F. Joers, and Gruetter and Joers in a certain cause between Ambrose P. S. Stuart, appellant, and Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, *et al.*, appellees, No. 666, December term, A. D. 1895, as full, true, and complete as the originals of the same now remain on file and of record in my office.

I further certify that the original citation, with the acknowledgment of service endorsed thereon, is hereto attached and herewith returned.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this seventh day of April, A. D. 1896.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

293 In the Supreme Court of the United States.

AMBROSE P. S. STUART, Appellant,
v.
KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska; Augustus T. Gruetter, and Charles F. Joers, Appellees.

Assignments of Error.

The appellant herein, by C. C. Flansburg, his counsel, says that the decree, finding, opinion, and judgment in the above-entitled cause, rendered by the circuit court of appeals of the United States within and for the eighth judicial circuit, is erroneous and against the just rights of appellant Stuart for the following reasons:

First. The court erred in holding the said appellant, Stuart, liable simply because he was a director and ought to have known, when in fact he had no actual notice of the condition of said bank.

Second. The court erred in rendering judgment for the receiver and holding the appellant Stuart liable on said assessment levied by the comptroller.

Third. The court erred in holding that said transfer was fraudulent and made on behalf of said Stuart with the intent and for the purpose of escaping his statutory liability.

Fourth. The court erred in holding that the said transfer was voidable as to the bank after it had found that the transferees were solvent at the time of the transfer.

Fifth. The court erred in reversing the case and ordering a decree to be entered against Ambrose P. S. Stuart, thus and
294 thereby making a new contract for the parties.

Sixth. The court erred in holding that said transfer was voidable as to the bank after it had expressly found that the transfer was valid as to the transferees, and that they had by affirmative action confirmed the validity of said transfer.

Seventh. The court erred in not directing the receiver to collect from Gruetter & Joers, the transferees, the amount of the assessment, it appearing that they were at the time of the bringing of the suit possessed of large amounts of personal property, more than sufficient to pay the assessment levied by the comptroller, and it also appearing that Gruetter & Joers, the transferees, with full knowledge of all the facts, had confirmed the validity of the transfer.

Eighth. The court erred in not awarding to the appellant Stuart his costs in reversing the decree of the court below, the circuit court having held that the transfer was void as to the bank, having ordered a transfer of the shares of the stock to be entered upon the books of the bank in the name of Ambrose P. S. Stuart, when in fact, at the most, said transfer was only voidable, and the court had no jurisdiction to award the entering of said transfer upon the books of the bank, and this decree being erroneous and so found by the circuit court upon a reversal thereof, appellant should recover his costs.

Wherefore the said appellant prays that the said decree be reversed; that the said court may be directed to enter a decree reliev-

ing said appellant from all liability by reason of the transfer of said stock and awarding him his costs.

C. C. FLANSBURG,
Counsel for Appellant.

295 [Endorsed:] Case No. 16,243. Supreme Court U. S., October term, 1896. Term No., 481. Ambrose P. S. Stuart, app't, *vs.* Kent K. Hayden, rec'r, *et al.* Assignment of errors. Filed July 1, 1896.

Endorsed on cover: Case No. 16,243. U. S. circuit court of appeals, eighth circuit. Term No., 151. Ambrose P. S. Stuart, appellant, *vs.* Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska; Augustus T. Gruetter, and Charles F. Joers. Filed March 30, 1896. Case No. 16,265. Term No., 160. August T. Gruetter and Charles F. Joers, appellants, *vs.* Ambrose P. S. Stuart and Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska. Filed April 27, 1896.